

MAINE STATE LEGISLATURE

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New Draft of: H. P. 1538, L. D. 1980
FIRST SPECIAL SESSION

ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 2048

H. P. 1588

House of Representatives, February 25, 1972

Reported by a Majority of the Committee on State Government and printed under Joint Rules No. 18.

BERTHA W. JOHNSON, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-TWO

AN ACT Relating to Legislative Ethics.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 3, § 381, sub-§ 4, repealed and replaced. Subsection 4 of section 381 of Title 3 of the Revised Statutes, as enacted by chapter 146 of the public laws of 1971, is repealed and the following enacted in place thereof:

4. **Authority.** The committee shall have the authority:

A. To issue, on request of any Legislator, advisory opinions involving himself on questions involving conflicts of interest in legislation under consideration by the Legislature.

B. To investigate conflicts of interest, hold hearings and issue opinions thereon.

5. **Procedure.** The following procedures shall apply to all matters within the jurisdiction of the committee:

A. Requests for advisory opinions by Members of the Legislature shall be filed with the committee in writing, signed by the Legislator requesting the opinion and contain such supporting data as the committee may require.

B. The committee shall conduct such investigations and hold such public hearings as it deems necessary upon a majority vote of the members of the committee only after a person has filed a complaint under oath with the chairman specifying the facts of the alleged conflict of interest. When the conduct of a particular Legislator is under inquiry, and a hearing is to

be held, the Legislator shall be given written notification of the conflicts alleged and of the time and place the hearing is to be held. Such notification shall be given not less than 10 days prior to the date set for the hearing. If the defendant Legislator requests it, a hearing shall be held within 10 days from the filing of the complaint.

C. The committee shall have the authority, through its chairman or any member designated by him, to administer oaths, subpoena witnesses and compel the production of books, records, papers, documents, correspondence and other material and records which the committee deems relevant. The State, its agencies and instrumentalities shall furnish to the committee any information, records or documents which the committee designates as being necessary for the exercise of its functions and duties.

In the case of refusal of any person to obey an order or subpoena of the committee, the Superior Court, upon application of the committee, shall have jurisdiction and authority to require compliance with the order or subpoena. Any failure of any person to obey an order of the Superior Court may be punished by that court as a contempt thereof.

D. Any person whose conduct is under inquiry shall be provided with the fullest measure of due process, including the right to appeal to the Superior Court pursuant to Rule 80 (b) of the Maine Rules of Civil Procedure and if requested, the right to a hearing. All witnesses shall be subject to cross examination. If the person who files the complaint fails to appear at the hearing, the complaint shall be dismissed with prejudice and the defendant Legislator may bring an action in Superior Court against the complainant for damages to his reputation and for his reasonable attorney's fees.

Any person whose name is mentioned in an investigation or hearing and who believes that testimony has been given which adversely affects him shall have the right to testify, or, at the discretion of the committee, to file a statement of facts under oath relating solely to the material relevant to the testimony of which he complains. Any witness at an investigation or hearing, subject to rules and regulations promulgated by the committee, shall be entitled to a copy of his testimony when the same becomes relevant to a criminal proceeding or subsequent investigation or hearing, provided that the furnishing of such copy will not prejudice the public interest.

All witnesses shall be sworn. The committee shall not be bound by the strict rules of evidence, but its findings and opinions must be based upon competent and substantial evidence.

Time periods and notices may be waived by agreement of the committee and the person whose conduct is under inquiry.

E. A copy of the committee's advisory opinions and guidelines with such deletions and changes as the committee deems necessary to protect the identity of the person seeking the opinions, or others, shall be filed with the Clerk of the House and the clerk shall keep them in a special binder and shall finally publish them in the Legislative Record. The committee may exempt an opinion or a part thereof from release, publication or in-

spection, if it deems it is appropriate for the protection of 3rd parties and makes available to the public an explanatory statement to that effect.

F. The records of the committee and all information received by the committee in the course of its investigation and conduct of its affairs, other than that disclosed at public hearings and its opinions and guidelines shall be confidential.

G. In addition to the foregoing, the committee shall have the authority to adopt, amend and repeal any rules and regulations it deems necessary to carry out this chapter, and it shall exercise all other powers and duties necessary to effect the purpose of this chapter.

Sec. 2. R. S., T. 3, §§ 382-385, additional. Title 3 of the Revised Statutes is amended by adding 4 new sections to read as follows:

§ 382. Conflict of interest

For the purposes of this chapter a Legislator shall be deemed to have a conflict of interest:

1. Legislator or spouse. When the adoption of proposed legislation will result in a direct significant financial gain to him or his spouse;

2. Employer, corporation or association. When the adoption of proposed legislation will result in a direct substantial financial gain to his employer or to a person, corporation or association in which he or his spouse own stock or other securities; and

3. Legislator's vote. When the Legislator's vote on a proposed matter is influenced by the promise of payment of money or by the promise of employment to him or a member of his family.

§ 383. Voting

If the committee has determined that a Member of the Legislature has a conflict of interest as defined in section 382, he shall be precluded from voting on any question in connection with the conflict in committee or in either branch of the Legislature.

§ 384. Penalty for false accusations

Any person who files a false or groundless charge of a conflict of interest with the Committee on Legislative Ethics, or any member of the committee, or whoever induces another to do so shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 11 months, or by both.

§ 385. Membership on boards, authorities or commissions

It shall not be a conflict of interest for a Legislator to serve on a public board, authority or commission created by the Legislature so long as there is no consideration paid to the Legislator other than his actual expenses.

STATEMENT OF FACT

This new draft changes the proposed bill by requiring that a person who files a complaint must file it under oath, that the Legislator will have a right to a hearing within 10 days if he so requests it, that all witnesses including the complainant shall be subject to cross-examination and that if the complainant fails to appear, the complaint is dismissed. It also gives the Legislator the right to sue the complainant if he fails to appear at the hearing.

A new section 382 attempts to define a conflict of interest so that the statute will define it and not the Ethics Committee. The duty of the Ethics Committee will be to apply the law to the facts as presented to them. Section 383 of the bill states that a Legislator who has a conflict of interest as defined is precluded from voting in both the committee and the floor; however, he still has his First Amendment right to speak on the issue. Section 384 deletes the requirement that a false complaint has to be knowingly and intentionally filed before a person is subject to a criminal punishment. Under section 383 a person who files a false or groundless complaint whether intentionally or not shall be subject to criminal punishment.