

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1877

H. P. 1774

House of Representatives, January 25, 1980

Reported by Mrs. Kany from the Committee on Government Ethics and printed under Joint Rule 17, pursuant to H. P. 1437.

EDWIN H. PERT, Clerk of the House

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

AN ACT to Clarify the Provisions Relating to Executive Conflicts of Interest and to Establish Financial Disclosure Requirements for Policy-making Executive Employees.

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

Sec. 1. 5 MRSA § 15, as last amended by PL 1977, c. 696, §§ 31 and 32, is repealed.

Sec. 2. 5 MRSA §§ 18 and 19 are enacted to read:

§ 18. **Disqualification of executive employees from participation in certain matters**

1. **Definitions.** As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Executive employee" means the Attorney General, Secretary of State, Treasurer of State, State Auditor and compensated members of the classified or unclassified service employed by the Executive Branch, but it shall not include:

- (1) The Governor;
- (2) Employees of and members serving with the National Guard;
- (3) Employees of the University of Maine, the Maine Maritime Academy and State vocational-technical Institutes; and

(4) Employees who are employees solely by their appointment to an advisory body.

B. "Participate in his official capacity" means to take part in reaching a decision or recommendation in a proceeding that is within the authority of the position he holds.

C. "Proceeding" means a proceeding, application, request, ruling, determination, award, contract, claim, controversy, charge, accusation, arrest or other matter relating to governmental action or inaction.

2. Executive employee. An executive employee commits a civil violation if he personally and substantially participates in his official capacity in any proceeding in which, to his knowledge, any of the following have a direct and substantial financial interest:

A. Himself, his spouse or his dependent children;

B. His partners;

C. A person or organization with whom he is negotiating or has agreed to an arrangement concerning prospective employment; or

D. An organization in which he has a direct and substantial financial interest.

3. Former executive employee. A former executive employee commits a civil violation if he, within one year after his employment has ceased, either knowingly acts as an agent or attorney for, or appears personally before, a state or quasi-state agency for anyone other than the State in connection with a proceeding in which:

A. The State is a party or has a direct and substantial interest; and

B. The particular matter at issue was pending before his agency and was directly within his official responsibilities as an executive employee at any time within one year prior to the termination of his employment.

4. Construction of section. This section shall not be construed to prohibit former state employees from doing personal business with the State.

5. Penalty. A violation of this section shall be a civil violation for which a forfeiture of not more than \$1,000 may be adjudged.

§ 19. Financial disclosure by executive employees

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Appointed executive employee" means a compensated member of the classified or unclassified service employed by the Executive Branch, who is appointed by the Governor and confirmed by the Legislature.

B. "Elected executive employee" means the Attorney General, Secretary of State, Treasurer of State and State Auditor.

C. "Executive employee" means an appointed executive employee or an elected executive employee.

D. "Future interests" means a legally enforceable right to income or property in the future, including contracts or agreements for future employment or income, vested pension or retirement benefits or distributive shares of a former partnership or business association.

E. "Income" means economic gain from any source, including compensation for services, including fees, commissions and payments in kind; income derived from business; gains derived from property transactions, rents or royalties; income from investments, including interest, capital gains and dividends; alimony or separate maintenance payments; annuities; income from life insurance or endowment contracts; pensions; discharges of indebtedness; distributive share of partnership income; income from an interest in an estate or trust; and prizes, awards, grants or gifts.

F. "Property" means both real estate and personal property.

2. Statement of finances. Each executive employee shall annually file with the Secretary of State a sworn and notarized statement of finances for the preceding calendar year and an estimate for the next year. The statement shall indicate the category or type of:

A. The entity or economic activity that is the source of income to him, his spouse or dependent children that exceeds \$300 during the year;

B. Property owned by him, his spouse or dependent children that exceeds \$5,000 in fair market value during the year;

C. Future rights that he, his spouse or dependent children will be entitled to and that will exceed \$300 in income or \$5,000 in fair market value in any future year; and

D. If he is an attorney, the major areas of practice, and if associated with a law firm, the major areas of the firm's practice.

3. Time for filing.

A. An elected executive employee shall file an initial report within 30 days of his election. An appointed executive employee shall file an initial report prior to confirmation by the Legislature.

B. Each executive employee shall file the annual report prior to the close of the 2nd week in April, unless he has filed an initial or updating report during the preceding 30 days.

C. Each executive employee whose income or property substantially changes shall file a report of that change within 30 days of it.

4. Penalties. Failing to file the statement, within 15 days of having been notified by the Secretary of State of failing to meet the requirements of subsection

2, shall be a civil violation for which a forfeiture of not more than \$100 may be adjudged.

5. **Rules.** The Secretary of State may adopt or amend rules to specify the reportable categories or types, the methods of valuation, the procedures and forms for reporting and to administer this section.

6. **Public record.** Statements filed under this section public records.

Sec. 3. 5 MRSA § 307, as last amended by PL 1973, c. 622, § 5, is further amended to read:

§ 307. Interest in contracts prohibited

In Addition to the limitations of section 18, ~~NO~~ no employee of the Department of Finance and Administration or member of the commission shall be interested directly or indirectly in any contract or contracts calling for the construction or improvement of facilities, buildings and grounds in the Capitol Area in the City of Augusta as described in Title 1, section 814.

Sec. 4. 5 MRSA § 1061, sub-§ 5 is amended to read:

5. **Trustees and employees not to have interest in investments.** Except as otherwise provided, **in addition to the limitations of section 18,** no trustee and no employee of the board of trustees shall have any direct interest in the gains or profits of any investment made by the board; nor shall any trustee or employee of the board, directly or indirectly, for himself or as an agent, in any manner use the same except to make such current and necessary payments as are authorized by the board; nor shall any trustee or employee of the board become an indorser or surety; or in any manner an obligor, for moneys loaned to or borrowed from the board.

Sec. 5. 5 MRSA § 5009, as enacted by PL 1975, c. 587, § 5, is amended to read:

§ 5009. Restrictions on employee interests

In addition to the limitations of section 18, ~~No~~ no member, officer or employee of the Office of Energy Resources shall acquire any interest, direct or indirect, in any contract or proposed contract negotiated or proposed by the Office of Energy Resources, nor shall any member, officer or employee participate in any decision or any contract entered into by the authority if he or she has an interest, direct or indirect, in any firm, partnership, corporation or association which will be party to such contract or financially involved in any transaction with the authority.

Sec. 6. 7 MRSA § 2952, first ¶, 2nd sentence, as repealed and replaced by PL 1975, c. 517, § 1, is amended to read:

In addition to the limitations of Title 5, section 18, ~~None~~ none of the remaining 4 members of the commission shall at the time of appointment or while serving as a member of the commission, and no employee of the commission shall have any official business, other than retail purchases of milk, or professional connection

or relation with, or hold any interest or stock or securities in, any producer, dealer, store or other person whose activities are subject to the jurisdiction of the commission; nor shall any member or employee of the commission render any professional or other service against any such producer, dealer, store or other person whose activities are subject to the jurisdiction of the commission or be a member of a firm which shall render any such service.

Sec. 7. 9-B MRSA § 213, sub-§ 3 is enacted to read:

3. Additional limitations. The provisions of this section shall be in addition to the limitations of Title 5, section 18.

Sec. 8. 10 MRSA § 865, as enacted by PL 1977, c. 489, § 12, is amended to read:

§ 865. Conflicts of interest

In addition to the limitations of Title 5, section 18, ~~No~~ no member of the authority shall participate in any decision on any contract entered into by the authority under this chapter if he has any interest, direct or indirect, in any firm, partnership, corporation or association which may be a party to such contract, or if he has any interest, direct or indirect, in any firm, partnership, corporation or association which is a user of any project to be financed pursuant to or in connection with such contract.

Sec. 9. 22 MRSA § 314, as enacted by PL 1977, c. 687, § 1, is amended to read:

§ 314. Conflict of interest

In addition to the limitations of Title 5, section 18, ~~Any~~ a member or employee of the Department of Human Services or Health Systems Agency who has a substantial economic or fiduciary interest which would be affected by a recommendation or decision to issue or deny a certificate of need, or who has a close relative or economic associate whose interest would be so affected shall be ineligible to participate in the review, recommendation or decision making process with respect to any application for which the conflict of interest exists.

Sec. 10. 28 MRSA § 60 2nd sentence, as enacted by PL 1975, c. 741, § 34, is amended to read:

In addition to the limitations of Title 5, section 18, ~~Neither~~ neither the commission, nor any employee, shall accept directly or indirectly any samples, gratuities, favors or anything of value from a manufacturer, seller, brewer or licensee or any representative of the same under circumstances which might reasonably be construed as influencing or improperly relating to past, present or future performance of his official duties.

Sec. 11. 29 MRSA § 1517, sub-§ 1 is amended by adding after the first sentence a new sentence to read:

These rules shall be in addition to the limitations as they apply to state employees under Title 5, section 18.

Sec. 12. 30 MRSA § 4603, last sentence, as repealed and replaced by PL 1975, c. 625, § 14, is amended to read:

Any violation of this section ~~shall constitute a misdemeanor~~ is a **Class E crime**. **The provisions of this section are in addition to the limitations of Title 5, section 18.**

Sec. 13. 30 MRSA § 5330, as last amended by PL 1979, c. 324, § 13, is further amended by adding after the first paragraph a new paragraph to read:

The provisions of this section shall be in addition to limitations of Title 5, section 18.

Sec. 14. 35 MRSA § 2, first sentence is amended to read:

In addition to the limitations of Title 5, section 18, No no member or employee of said commission shall have any official or professional connection or relation with or hold any stock or securities in any public utility, as defined in section 15, operating within this State, nor shall he render any professional service against any such public utility nor shall he be a member of a firm which shall render any such service.

STATEMENT OF FACT

This bill is a result of a study by the Joint Select Committee on Government Ethics as ordered by H. P. 1437. The purpose of this bill is to revise the ethics statutes relating to state employees. This bill strengthens and clarifies the provisions on avoiding the appearance of conflicts of interest by present state employees, removes the limitations on former partners of employees and adds provisions on financial disclosure for certain employees.