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**REPORT OF THE COMMISSION
TO STUDY ETHICS
IN STATE GOVERNMENT**



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STATE OF MAINE
HOUSE OF REPRESENTATIVES
SPEAKER'S OFFICE
AUGUSTA, MAINE 04333

JOHN L. MARTIN
SPEAKER

October 5, 1988

Hon. Stanley R. Tupper
102 Townsend Avenue
Boothbay Harbor, Maine 04569

Dear Stan:

We are pleased to appoint you as Chair of the Blue Ribbon Commission to Examine Ethics in State Government. We appreciate your willingness to serve in this capacity, and are grateful to have you lend your considerable experience and prestige to this endeavor.

As you know, we are also appointing former Governor Kenneth M. Curtis and Professor Eugene Mawhinney to serve with you on the Commission. Thank you for your contribution to solving this very difficult public policy issue.

Sincerely,

Charles P. Pray
President of the Senate

John L. Martin
Speaker of the House

CC: Joy J. O'Brien, Secretary of the Senate
Edwin H. Pert, Clerk of the House

December 30, 1988

TO: The Honorable John L. Martin
Speaker of the House

The Honorable Charles P. Pray
President of the Senate

FROM: Commission to Examine Ethics in State Government

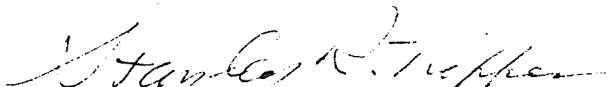
SUBJECT: Report, including recommendations

The undersigned, after examining existing standards pertaining to ethics in State government, respectfully submit our recommendations as to ways to tighten these standards.


Because of time constraints, we necessarily had to focus on certain areas that we considered the most important.

We believe that the Legislature should constantly seek ways to increase public confidence in state government, and offer these recommendations only as a beginning of such an ongoing effort.

We wish to express our appreciation for assistance rendered to us by attorneys John D. Gleason, Esq., Gerald Petrucelli, Esq. and William Stokes, Esq.


Stanley R. Tupper, Chairman


Kenneth M. Curtis


Eugene Mawhinney

REPORT OF COMMISSION TO EXAMINE ETHICS IN STATE
GOVERNMENT

BY

STANLEY R. TUPPER, KENNETH M. CURTIS AND EUGENE MAWHINNEY

The Commission to examine ethics in State Government was appointed by the Speaker of the House and President of the Maine Senate on October 5, 1988, with a charge to render a report prior to January 1, 1989.

We hereby respectfully submit the following findings and recommendations:

Maine's State Legislature is a citizens Legislature made of men and women, the great majority of whom are of the highest character and integrity. They are part-time Legislators and unless retired, have jobs or professions. Maine already has a considerable body of law on ethics, bribery and corrupt practices and administrative procedures.

It is clear that in the absence of specific statutory provisions, the Constitution gives the Legislative Branch wide powers to control its own conduct.

Under the separation of powers it is important to note that the authority of the Commission on Governmental Ethics and Election Practices (presently a 7 person commission) springs from the Legislature without participation in the appointing process by the Governor. Thus, it would appear that powers of the existing commission apply to members of the Legislature, employees of the Legislature and candidates for the Legislature, and could not be extended to executive employees. Ethical standards for executive employees as embodied in state conflict of interest statutes (e.g. 5 M.R.S.A. Sec. 18) are enforced by the Attorney General.

It is an overworked cliché that "you can't legislate morals"; Sophocles, around 2400 years ago put it best when he said, "There is no accuser so powerful as conscience that dwells within us."

We believe that we can best fulfill our responsibility by suggesting several ways to tighten existing standards, and by making additional suggestions that may heighten awareness of the necessity of avoiding any perception of unethical conduct.

Our recommendations are not meant to criticize past Legislatures or individual Legislators.

COMMISSION ON GOVERNMENTAL ETHICS AND
ELECTION PRACTICES

RECOMMENDATION: That the makeup of the Commission on Governmental Ethics and Election Practices be changed as follows:

1 M.R.S.A. Sec. 1002(1) Membership (change to read as follows)

"The Commission on Governmental Ethics and Election Practices established by Title 5, Sec. 12004, subsection 8, called the 'commission' shall consist of three members to be appointed as follows:

A. The President of the Senate, together with the floor leaders of the two major parties, shall appoint a single member to the commission with the concurrence of 2/3 vote of the Senate.

B. The Speaker of the House, together with the floor leaders of the two major parties, shall appoint a single member to the commission with the concurrence of 2/3 vote of the House.

C. The two members thus appointed will appoint a third member who shall serve a term of two years or until a successor is appointed and qualified.

D. The three-person commission shall select one of its members as Chair to serve during the two year term or until his successor is selected; selection of a Chair must be by affirmative vote of at least two members.

E. All members shall be appointed in January of each even numbered year.

F. Two members shall constitute a quorum and the vote of two members shall be necessary for any action by the commission.

G. The appropriate appointing authority shall appoint members to vacancies on the commission as they shall occur or upon expiration of terms. Vacancies shall be filled for the unexpired term of which such vacancy occurs.

H. No appointee to the commission shall hold any political office, nor be a lobbyist or official or an employee of the State of Maine or any of its subdivisions. A commission member shall excuse himself in any matter before the commission where he has participated in any political or referendum campaign or other ballot issue.

Comment: We believe the commission has generally worked well. We believe that a three-member commission will narrow responsibility, focus more attention upon the commission and prove more effective.

RECOMMENDATION: That the commission and the Attorney General conduct a seminar on ethics after the general election and prior to the convening of the legislature, in every even numbered year for legislators. That the Attorney General at this time provide each legislator a bound compilation of all laws relating to legislative ethics and conduct.

RECOMMENDATION: That inasmuch as the commission has only one staff member, that another staffer be employed to assist in review of reports and other work of the commission. A watchdog commission must have adequate staff to carry out its mission; otherwise it becomes merely "window dressing".

RECOMMENDATION: That the commission recommend to the Legislature annually any changes it deems necessary or appropriate in regard to ethical standards.

RECOMMENDATION: In respect to 1 M.R.S.A. Sec. 1013 (1.B) Authority; Procedures

(Amend to read)

"To investigate complaints filed by legislators or any citizen of the State alleging conflict of interest; to hold hearings thereon if the commission deems appropriate; and to issue public findings of fact with its opinion. All complaints shall be held in strict confidence until an investigation is fully completed and a hearing ordered insofar as possible under right to know laws.

CONFLICT OF INTEREST (HONORARIA)

RECOMMENDATION: 1 M.R.S.A. Sec. 1014 (1) (Add new paragraph)

"Where a legislator accepts an honorarium of more than \$500.00 for a single speech or appearance."

Comment: Honoraria can be abused and be perceived by the public as a conflict with legislative responsibilities.

CONFLICT OF INTEREST (UNDUE INFLUENCE)

RECOMMENDATION: Amend 1 M.R.S.A. Sec. 1014, Subsection 2 (A) to change the word constituent to citizen and add the following language to 1 M.R.S.A. Sec. 1014 (2.A):

"All legislators, without exception, shall refrain from any threat, or statement that could be reasonably construed as a threat, orally or in writing, relating to legislative action in communication with a state agency or authority."

Comment: A legislators role is to legislate, despite the fact that they have taken on numerous other functions at the urging of constituents. Legislators must take extraordinary care not to use or give the appearance of using coercion or intimidation in communications with state agencies or authorities. It should be unnecessary to add that a legislator should not intervene in a criminal proceeding unless a complainant, defendant, or as a subpoenaed witness.

DISCLOSURE (LEGISLATORS)

1 M.R.S.A. 1016 Statement of Sources of Income

RECOMMENDATION: (Amend as follows)

"Each member of the House and Senate shall file a statement with the commission prior to the first day of February of each year, citing each bona fide source of income to himself, spouse or dependent children of over \$500.00 during the preceding calendar year, by actual name, address and the nature of the service of other source of income. Reporting as a source of income a consulting form of which the legislator, spouse or dependent child is a principal, for the purpose of evading the foregoing provision, shall not satisfy this requirement.

Attorneys at Law shall not be excused from reporting the name of clients but shall be excused from reporting the nature of services performed under the canon of ethics of the Bar pertaining to confidentiality. If an attorney reports as a source of income a law firm, he must divulge the principal areas of law in which he is engaged by that firm, and categories of law performed by that law firm where it derived in excess of 20% of its gross income during the preceding two years.

Legislators shall also report all liabilities during the last calendar year over \$3,000.00 by name and address, excluding home mortgages financed through banking or credit organizations, credit cards, or retail installment credit. This requirement shall also apply to the spouse and dependent children of legislators.

Comment: Legislators have a responsibility not to be perceived as using their office to obtain special advantage for an employer, client, individual, firm, corporation or organization.

DISCLOSURE (Executive Employees)

5 M.R.S.A. Sec. 19 (2.A)

RECOMMENDATION: Statement of sources of income amended as follows:

"The actual name and address and nature of each and every bona fide source of income to him, his spouse or dependent children that exceeds \$500.00 during the preceding calendar year."

FORMER LEGISLATORS

RECOMMENDATION: 1 M.R.S.A. Sec. 1022 (add new section)

"No former legislator may engage in lobbying activity, including appearance as an agent before a legislative committee, for a period of 12 months after he shall leave the legislature."

DISCIPLINARY GUIDELINES

RECOMMENDATION: That the Legislature, acting under Article 4, Sec. 4 of the Maine Constitution, enact guidelines indicating when reprimand, censure or expulsion would be appropriate when members are in violation of ethical standards. For instance conviction of a felony or a serious misdemeanor should subject a member to expulsion proceedings: for other violations of ethical conduct reprimand or censure would be appropriate depending upon the nature of severity of the breach of ethics. Procedural guidelines should also be established to deal with misconduct reported by the commission.

CODE OF ETHICS

RECOMMENDATION: That the Legislature enact and publish a new code of ethics for members and employees of the Legislature. A proposed code of ethics is made a part of this report.

PROPOSED CODE OF ETHICS
FOR MEMBERS AND EMPLOYEES
OF THE STATE LEGISLATURE

DECLARATION OF POLICY

It is declared that high moral and ethical standards among state public officials and state employees are essential to the conduct of free government. The legislature hereby reaffirms that a state public official holds his or her position as a public trust, and any effort to realize substantial personal gain through official conduct is a violation of that trust. The legislature believes that a Code of Ethics for the guidance

of its members, employees, and candidates for membership will help them avoid conflicts between their personal interests and their public responsibilities, will improve standards of public service and will promote and strengthen the faith and confidence of the people of Maine in their legislature.

1. CONDUCT

A member or employee shall put loyalty to the highest moral principals and to the State of Maine above loyalty to persons or political party.

A member or employee shall conduct himself or herself at all times so as to reflect credit upon the Legislature, and shall obey all rules of the Legislature as well as all laws relating to his or her conduct in the performance of his or her duties.

2. VOTING ABSTENTION

Members at all times shall scrupulously avoid participating in, and voting on, legislation in which the member believes he or she has a substantial personal interest.

3. COMPENSATION

A member or employee shall not use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of the member or employee or for an organization with which the member or employee is associated, beyond that which would normally accrue to the member or employee in the performance of his or her official duties, or permitted under the statutes.

4. CONFIDENTIAL INFORMATION

Members and employees shall endeavor to preserve the confidentiality of information so entrusted to them and shall never use any such confidential information as a means of acquiring private advantage or profit for himself or herself, for his or her immediate family, or for any other person.

5. IMPROPER INFLUENCE

No member or employee shall use or attempt to use his or her official position to gain unlawful benefits, advantages or privileges for himself or herself or others.

6. STAFF USE

Members of the Legislature shall endeavor to utilize the services of the body's employees only for the official purpose for which they are employed.

7. HONORARIA

Members accepting an honorarium or similar fee for making a personal appearance or speech, or writing for a publication, or performing a similar activity shall endeavor to insure that the honorarium or similar fee is not in excess of that permitted by statute, or the usual and customary value of the services rendered and is paid in recognition of demonstrable business, professional or aesthetic interests of the member that exist apart from his or her public office.

8. IMPROPER INDUCEMENT

Members and employees shall report to the Ethics Committee of the Legislature any attempts by any person to induce a member or employee of the legislature to violate any provisions of this Code of Ethics.

9. IMPROPER COMMUNICATIONS

Members shall scrupulously avoid ex part communications with officials or employees of agencies or departments of other executive branches of state government when a matter is being adjudicated or is in a formal proceeding within that agency, department or branch, unless the communication is to request information, a status report, or to urge prompt consideration of a matter, to arrange appointments; to express an opinion, or is otherwise in conformity with a statute.

All legislators must take extraordinary care not to use coercion or intimidation, in communications with any state agency or authority.

10. APPEARANCE OF IMPROPRIETY

Members and employees shall diligently avoid even the appearance of impropriety in the conduct of their public service, in order that public confidence in our representative system of government be preserved.