

Agenda

Item #7



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: November 10, 2009

Re: Second Draft of Report on Maine's Executive Branch Ethics Laws

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Thank you for your comments on the first draft of the report on executive branch ethics laws. I have attached a second draft. I hope you will let me know at the November 19 meeting if the report is acceptable to you or whether I should make further changes.

Any language in the second draft that is new or that has been moved is shown in bold typeface. I have:

- moved language from pages 7-8 of the report to page 1, as suggested by Commissioner Marsano,
- made the amendment on page 7 suggested by Commissioner McKee,
- deleted some unnecessary language on page 19 which Commissioner Marsano found confusing,
- changed page 28 (as suggested by Commissioner Marsano) so that the Commission suggests that the Legislature consider including all of the relevant ethics laws in one location. I have included as "Option B" the original language making no recommendation to the Legislature on this point, and
- included some minor changes suggested by the Commission's Counsel.

Thank you.

# Report on Ethics Laws for Executive Branch Employees

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## **PART I. SUMMARY AND INTRODUCTION**

This report is issued by the Maine Commission on Governmental Ethics and Election Practices in response to Resolve Chapter 88 of the Public Laws of 2009.

The resolve directs the Commission to

examine existing ethical standards that govern members of the executive branch and develop advisory recommendations regarding the establishment of statutory ethical standards for the executive branch and submit a report, including suggested legislation, to the Joint Standing Committee on Legal and Veterans affairs no later than December 3, 2009. (see Appendix)

**The Commission on Governmental Ethics and Election Practices has no jurisdiction over executive branch ethics in Maine, other than receiving personal financial disclosure statements from major policy-influencing officials and other department managers. Maine is one of 11 states which does not have an independent agency that regulates the professional ethics of the executive branch of government, according to research by the National Conference of State Legislatures.**

**The Commission's only ethics jurisdiction pertains to Legislators. The Commission offers advice on selected ethics issues to Legislators and investigates complaints of ethical violations by Legislators if the complaints have merit and are within the Commission's limited jurisdiction (i.e., conflicts of interest, undue influence on agencies, and abuse of office or position).**

**Under its existing mandate, 'ethics' constitutes only a small part of the Commission's responsibilities (as the term is used in most other states). In spite of its name, the Commission is primarily a financial disclosure board for political campaigns and lobbying activities, not an ethics agency. The Commission's major duties are:**

- serving as the campaign finance agency for the State of Maine by receiving and overseeing financial reporting by 500+ candidates, 125+ political action committees, dozens of party committees, and beginning in 2011, municipal candidates and political action committees in 13 towns and cities with a population of 15,000 or more;**
- administering the Maine Clean Election Act, which involves monitoring \$3 - \$8 million in spending of public funds by political candidates each election year; and**
- serving as the lobbyist disclosure agency by overseeing disclosure reports by hundreds of lobbyist and their clients.**

**The Commission has a permanent staff of seven employees, who are spread thin assisting and monitoring the many filers within the Commission's jurisdiction. In the past five years, it has been successful in professionalizing its performance and wishes to make more improvements. The Commission is willing to take on any mandate assigned by the Legislature, but is concerned that accepting an enforcement and education role in the area of executive branch ethics without a staffing increase would hamper future efforts to improve performance in its core mission.**

State government in Maine (and northern New England generally) has a reputation for good government. Relative to other regions of the country, Maine

experiences relatively few incidents of state, county, and municipal employees using their positions for self-enrichment. Many factors contribute to this success, but one factor is the personal ethics of the individuals employed by these public bodies. Employees of the executive branch are expected to perform their responsibilities ethically, and anecdotal evidence suggests that they do so overwhelmingly.

Nevertheless, it would be naïve to assume that instances of unethical conduct by state employees never occur. Even in a good-government state such as Maine, ethics statutes and policies have an important role in

- educating new employees about ethically difficult situations that could arise during the course of their employment,
- providing specific guidance to an employee or his or her supervisor who is unsure whether a proposed course of action is permissible, and
- constituting the basis for discipline in those instances where employees violate standards.

Therefore, it is important for the executive and legislative branches to periodically review current statutes and policies to confirm that they are adequate. The Commission hopes that this report will be helpful to the Legislature by gathering in one publication the existing ethical standards affecting the executive branch to assist Legislators in deciding whether changes to existing statutes are needed.

As described in Part III of the report, ethical standards governing executive branch employees in Maine are distributed among several types of legal and personnel authorities: criminal laws, civil statutes of general applicability, agency-

specific laws, and non-statutory **sources** such as a statewide executive order, agency codes of ethics and conduct, personnel guidelines, state contracting provisions, and collective bargaining agreements. Collectively, these sources appear to cover many of the ethics issues that can arise in contemporary state government:

- conflicts of interest,
- using state equipment (e.g., computers, vehicles) for personal benefit,
- taking unauthorized actions as a public official to benefit oneself or another,
- making a contracting decision that benefits a family member or business associate,
- accepting outside employment that is incompatible with public duties,
- being offered something of value to influence a governmental decision, and
- using one's office for political activities.

In Part IV of this report, the Commission recommends improving educational materials for executive branch employees, including

- posting electronic materials on the websites of the Bureau of Human Services (BHR) or Department of Administrative and Financial Services (DAFS) with hyperlinks to the relevant legal and personnel **authorities**,
- introduction of ethics issues in the training of new state employees and agency managers, and
- periodic updates and reminders about the availability of resources on ethics laws.

## **PART II – EDUCATION AND ENFORCEMENT OF EXECUTIVE BRANCH ETHICS LAWS**

### **Independent Ethics Agencies in Other States**

Many states have established independent ethics agencies to investigate and punish ethical misconduct by employees in the executive branch of government.

Some of these agencies also have jurisdiction over county and municipal employees as well. Typically, the issues covered by these agencies include conflicts of interest, gifts to governmental employees, improper use of office or equipment for personal benefit, or use of state property for political activities.

In addition to enforcement, some of these agencies also serve an important educational function. Some publish educational materials for public employees on ethics issues, answer day-to-day questions from executive employees about proposed activities, or conduct trainings of employees if resources permit.

According to research posted on the website of the Center for Ethics in Government of the National Conference of State Legislatures, 39 of 50 states (78%) have an independent board or commission with jurisdiction over ethics of executive branch employees. Eleven states (approximately one-quarter) lack an independent executive branch ethics agency. These states are Wyoming, Vermont, North Dakota, South Dakota, New Hampshire, Maine, Idaho, New Mexico, Utah, Arizona, and Virginia. Except for Arizona and Virginia, these states have relatively small populations (*i.e.*, in the lower third by population).

## **Education and Enforcement in Maine**

In Maine, there is no separate board or commission that investigates misconduct by executive branch employees or offers guidance to executive **branch** employees on ethics issues. In Maine's executive branch, enforcement of ethical standards is conducted by the managers and the personnel officers in the various agencies with assistance provided by the Bureau of Human Resources (BHR), **which is guided by legal advice from the Attorney General's Office.** Employees who violate ethical rules are subject to discipline by the agencies. For employees who are covered by a collective bargaining agreement, the agency's investigations of misconduct must comply with the agreement.

In 2003, each state agency was required by statute to establish a policy "that makes certain that complaints filed by the public against a state employee or group of state employees are addressed by that agency." (5 M.R.S.A. § 7036(28)) The policies must:

ensure that there are written instructions describing the most effective way for the public to file a complaint with the agency, a procedure for the agency to address complaints from the public and a provision that requires the agency to notify a complainant of the outcome of the complaint.

In preparing this report, the Commission staff sought input from BHR concerning whether the establishment of an independent ethics agency could improve efforts to educate executive branch employees regarding ethical standards. The Director of BHR expressed concerns that if an independent agency were to offer

trainings to executive branch employees or to answer questions on specific inquiries,

- those educational activities could complicate lines of communication between agencies and their employees by sending mixed messages to employees about how ethical standards should be applied in specific situations, and
- it is possible that employees in agency disciplinary proceedings could even attempt to defend their own activities by pointing to past practices within the agency that were tolerated because of advice by the independent ethics agency.

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**The Legislature may wish to address these concerns** in any future consideration of establishing an independent ethics agency.

## **PART III – EXISTING ETHICAL STANDARDS IN MAINE STATUTE AND POLICY**

### ***Criminal Statutes***

Some of the most important restrictions in Maine law against unethical activity by state employees are contained in Chapter 25 of the Maine Criminal Code. **As with all criminal statutes, these are generally enforceable by the Attorney General's Office and the county District Attorneys.** The following section summarizes the statutes and is not intended as a legal analysis. All statutes referred to in this part of the report are included in the appendix.

#### **Bribery and Improper Gifts**

Maine's Criminal Code contains two statutes prohibiting a "public servant" from soliciting or accepting "any pecuniary benefit" from another person knowing that the other's purpose is to influence the public servant's performance of their duties. The two offenses are entitled "bribery in official and political matters" (17-A M.R.S.A. § 602(1)) and "improper gifts to public officials." (17-A M.R.S.A. § 605) While the two statutes overlap to some degree, in terms of the potential punishment, bribery is the more serious crime (Class C). Improper gifts is a Class E crime.

The term 'public servant' is not defined in either statute and presumably covers executive branch employees and officials in other departments of state government (e.g., constitutional offices). "Pecuniary benefit" is defined broadly,

**and although it contains certain exceptions (e.g., meals provided as part of an informational seminar, 17-A M.R.S.A. § 602(2)(C)), it does not contain any minimum dollar value threshold.**

In addition to the prohibition against the *acceptance* of a pecuniary benefit, both statutes prohibit *promising, offering, or giving* a pecuniary benefit to a public servant for the purpose of influencing their official actions. The bribery statute extends beyond influencing public servants and also covers providing something of value to a voter or a party official to influence their actions.

The bribery statute imposes an affirmative duty on the public servant to report to “a law enforcement officer” if he or she has been offered or promised a pecuniary benefit by someone with the intention of influencing his or her actions. (17-A M.R.S.A. § 602(1)(B))

### **Improper Compensation for Past Action and Improper Compensation for Services**

Two other criminal statutes forbid misconduct similar to bribery **and improper gifts**. Improper compensation for past action forbids a public servant from soliciting, accepting, or agreeing to accept any pecuniary benefit “in return for having given a decision, opinion, recommendation, vote, otherwise exercised his discretion, or for having violated his duty.” (17-A M.R.S.A. § 604(1)(A))

(emphasis added in quotation) The offense of improper compensation for services forbids a public servant from accepting a pecuniary benefit “in return for

advice or other assistance in preparing or promoting a bill, contract, claim or other transaction or proposal as to which he knows that he has or is likely to have an official discretion to exercise ....” (17-A M.R.S.A. § 606).

### **Official Oppression (Abuse of Position)**

The Criminal Code prohibits a public servant from

- “knowingly commit[ting] an unauthorized act which purports to be an act of his office” or “knowingly refrain[ing] from performing a duty imposed on him by law or clearly inherent in the nature of his office”
- “with the intention to benefit himself or another or to harm another ....”

(17-A M.R.S.A. § 608) Official oppression is a Class E crime.

### **Misuse of Information**

The offense of misuse of information prohibits a public servant from “acting in reliance on information which he has acquired by virtue of his office or from another public servant,” and

- acquiring a pecuniary interest in any property, transaction or enterprise which may be affected by such official action or information, or
- speculating or wagering on the basis of such information.

(17-A M.R.S.A. § 609)

### **Conflicts of interest in contracts**

Under 17 M.R.S.A. § 3104, a “trustee, superintendent, treasurer or other person holding a place of trust in any state office” may not have a pecuniary interest in any contract made on behalf of the institution in which he holds the place of trust. In addition, a civil law (5 M.R.S.A. § 18-A) described below governs conflicts of interest in agency contracts.

### ***Civil statutes***

Various sections of Title 5 of the Maine Revised Statutes impose ethical standards on executive branch employees in a number of areas:

Section 18(2)	conflict of interest in proceedings
Section 18(2-A)	participation in the legislative process
Section 18(3)	restrictions on former employees (revolving door)
Section 18(7)	avoiding an appearance of a conflict
Section 18(8)	duty to disclose a conflict of interest to one’s supervisor
Section 18-A	conflicts of interest in contracts
Section 19	statements of sources of personal income
Section 20-A	taking state property off-premises for personal use
Section 7051(3)	hiring relatives
Section 7056-A	political activities

### **Conflicts of interest in “proceedings” (5 M.R.S.A. § 18(2))**

The different subsections of 5 M.R.S.A. § 18 prohibit “executive employees” (a defined term, as explained below) from engaging in certain activities.

Subsections 7 and 8 use the phrase “conflict of interest,” but the term is not defined. Presumably, the activities forbidden by subsections 2, 2-A, and 3 are intended to constitute a conflict of interest, although they are not referred to as such.

Subsection 18(2) prohibits an executive employee from participating in “a proceeding” if certain individuals or organizations related to the employee have a direct and substantial financial interest in the proceeding. Under this subsection, “[a]n 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;
- D. An organization in which he has a direct and substantial financial interest;  
or
- E. Any person with whom the executive employee has been associated as a partner or a fellow shareholder in a professional service corporation pursuant to Title 13, chapter 22-A, during the preceding year.”

The term ‘proceeding’ is defined broadly to include

“Proceeding” means a proceeding, application, request, ruling, determination, award, contract, claim, controversy, charge,

accusation, arrest or other matter relating to governmental action or inaction.

"Executive employee" is also a defined term. The definition is long, but as indicated by the underlined phrase below, it applies to employees at every level of the executive branch:

B. "Executive employee" means the constitutional officers, the State Auditor, members of the state boards and commissions as defined in chapter 379 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 System, the Maine Maritime Academy and state community colleges;
- (4) Employees who are employees solely by their appointment to an advisory body;
- (5) Members of boards listed in chapter 379, who are required by law to represent a specific interest, except as otherwise provided by law; and
- (6) Members of advisory boards as listed in chapter 379.

#### **Participation in the legislative process (5 M.R.S.A. § 18(2-A))**

Under subsection 2-A, executive employees are also prohibited from participating in the legislative process if family members and other affiliated people and organizations have a "direct and substantial financial interest" in the legislation:

An executive employee commits a civil violation if the employee participates in the legislative process in the employee's official capacity concerning any legislation in which any person described

in subsection 2, paragraphs A to E has any direct and substantial financial interest unless the employee discloses that interest at the time of the employee's participation.

### **Revolving Door (former governmental employees) (5 M.R.S.A. § 18(3))**

Generally, the term 'revolving door' in governmental ethics laws refers to restrictions against a former governmental officer or employee who has worked on a specific matter as a public servant later using their understanding of the matter for personal gain in subsequent private employment.

Maine's revolving door restriction is contained in Section 18(3). It covers proceedings in which the specific issue

- was pending before the executive employee's agency and
- was directly within the responsibilities of the executive employee.

Under Section 18(3), the executive employee may not knowingly act as an attorney for – or appear personally before an agency for – anyone other than the state in such a proceeding. The time period for the prohibition varies, depending on when the issue was pending before the agency:

- If the issue was pending before the agency within the last 12 months of the individual's employment at the agency, the individual may not participate in the proceeding permanently.
- If the issue was pending prior to the last 12 months of the individual's employment at the agency, the prohibition is for a one year period after the individual's termination of employment.

**Avoiding an appearance of conflict of interest (5 M.R.S.A. § 18(7))**  
**Disclosing a conflict of interest (5 M.R.S.A. § 18(8))**

Subsection 7 directs executive employees to avoid the appearance of a conflict of interest “by disclosure or abstention”:

Every executive employee shall endeavor to avoid the appearance of a conflict of interest by disclosure or by abstention. For the purposes of this subsection and subsection 8, “conflict of interest” includes receiving remuneration, other than reimbursement for reasonable travel expenses, for performing functions that a reasonable person would expect to perform as part of that person’s official responsibility as an executive employee.

Subsection 8 describes the duty to disclose a conflict of interest:

An executive employee shall disclose immediately to that employee’s direct supervisor any conflict of interest within the meaning of this section.

Reading these subsections together, the statute may be read to mean:

- if a current employee is considering a course of action that would be forbidden by subsection 2, 2-A, or 3, the employee is required to both cease participating in the public matter and also to disclose the conflict to one’s supervisor, and
- if a situation presents an appearance of a conflict but does not require disqualification under subsection 2, 2-A, or 3, the appearance issue may be resolved through disclosure of the issue to the employee’s supervisor.

**Conflict of interest in contracts (5 M.R.S.A. § 18-A)**

As noted above, executive employees may not “personally and substantially” participate in any proceeding (including a contract) if certain individuals or organizations related to the employee have “a direct and substantial financial interest” in the proceeding. (5 M.R.S.A. § 18(2)) In addition, with respect to contracts in particular, certain higher-level executive employees of an agency

may not have “any direct or indirect pecuniary interest in” or receive “any benefit that may arise from” a contract made by the State when the employee’s agency is a party to the contract. (5 M.R.S.A. § 18-A) This civil prohibition is in addition to the criminal offense in 17 M.R.S.A. § 3104 described above.

**Statements of sources of personal income (5 M.R.S.A. § 19)**

High-level employees in the executive branch and the offices of the constitutional officers are required to file annual statements of the sources of their personal income. The reports are generally filed each April, except for the constitutional officers and the State Auditor who file the statements within 30 days of their election. The statements require the officials to disclose the sources of certain types of income such as employment by others, self-employment, gifts, and honoraria. The officials do not disclose the amounts of the income. (See form in appendix.) In 2008, the Legislature transferred the duty of receiving this executive branch disclosure from **the** Secretary of State’s Office to the Ethics Commission. Historically, the Commission has received similar disclosure statements from Legislators. Beginning in 2010, Legislators and executive branch officials will disclose in these statements any offices, directorships, or positions held by the officials in for-profit or non-profit organizations.

**Taking state property off premises for personal use (5 M.R.S.A. § 20-A)**

Under Subsection 1 of 5 M.R.S.A. § 20-A, an employee “may not take state property off the premises of the state for personal use or for the use of others

without prior written approval of the head of the department for which that employee works.”

**Hiring or promoting a relative (5 M.R.S.A. § 7051(3))**

Under the state’s civil service laws, the final decision of whether a person will be hired or promoted by the State “may not be made in part or wholly by a person related to the job candidate by consanguinity or affinity within the 4th degree.”

The BHR Policy and Practices Manual (Section 6.3 Nepotism) also refers to this restriction. BHR recommends, in addition, that relatives of a candidate who is being considered for employment or promotion should not take any role whatsoever in the selection process. The BHR manual notes, however, that there is no provision in statute, rule, or policy that restricts one employee from supervising a family member, as long as the supervisory relationship is guided by sound management practice.

**Political activities (5 M.R.S.A. § 7056-A)**

Maine Law contains restrictions against executive branch employees using their positions and equipment for certain political activities. (5 M.R.S.A. § 7056-A)

This statute is the Maine analogue to the federal Hatch Act of 1939. The statute applies to “an officer or employee in the classified service or an employee from the executive branch in the unclassified service of the state.”

*Running for partisan office.* Covered employees (except for National Guard members) may not be a candidate for elective office in a partisan public election other than for a local office. (§ 7056-A(4)) Being a candidate in a non-partisan election is permitted.

*Political contributions.* Executive employees are restricted from making contributions in certain circumstances. The restrictions seem to be designed to avoid interference with the employee's performance of his or her public duties. Otherwise, the employees are free to contribute money to candidates and to political organizations. The statute prohibits the employee from:

- giving a contribution to the employee's superior, or handing over a contribution to the superior
- accepting a contribution from a subordinate
- soliciting or accepting a contribution from someone who is regulated by the agency or who contracts with the agency, or making a contribution to such individuals or organizations, and
- giving a political contribution to another to influence that person's vote, and the employee may not receive a contribution to influence the employee's vote.

(§ 7056-A(2))

*Using state facilities or resources.* Covered employees and officers may not engage in "political activity"

- A. when the employee is on duty;
- B. in state-owned or leased work space occupied in the discharge of official duties or by using the facilities or services of the State; or

- C. when wearing a uniform or official insignia identifying the office or position of the employee or while using a vehicle owned or leased by the State or its agencies.

Political activity is defined as expressly advocating for a candidate, or soliciting contributions for a candidate, political action committee, or party committee.

(§ 7056-A(3))

Deleted a confusing staff note at request of Commissioner Marsano

*Using officer's authority.* A covered official and employee may not use the "officer's or employee's official authority, influence or supervisory position for the purpose of:

- A. interfering with or affecting the result of a partisan election or nomination for elective office; or
- B. attempting to intimidate, threaten, coerce, command or influence a person to give or withhold a political contribution or to engage or not to engage in any form of political activity as defined in this section."

(§ 7056-A(1))

### **Agency-Specific Statutes Concerning Conflicts of Interest**

In addition to the conflict of interest provisions in Title 5 described above, many departments of the state government have agency-specific statutes which describe a conflict of interest in the context of the particular duties of the agency.

For example:

- Certain substantial changes to health care facilities require that the Department of Health and Human Services issue a "certificate of need." An employee of the department cannot participate in the decision to grant a certificate if the employee "has a substantial economic or fiduciary interest that 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." (22 M.R.S.A. § 344)

- An employee of the Maine State Housing Authority may not participate "in any decision on any contract or project entered into by the Maine State Housing Authority if that employee or commissioner has any interest, direct or indirect, in any firm, corporation, partnership, or association which may be party to the contract or financially interested in any such project." (30-A M.R.S.A. § 4724)

### ***Other Authorities***

#### **1989 Executive Order**

On April 1, 1989, Governor John R. McKernan, Jr. issued Executive Order 10 FY88/89 establishing a Code of Ethics and Conduct for Maine state government. Most sections of the code could be characterized as aspirational in that they call on employees to strive for a high level of service, effectiveness, personal integrity, and respect for colleagues. A copy of the order, which remains in effect, is included in the appendix.

#### **Agency Codes of Ethics**

In August 2006, Governor John Baldacci directed DAFS Commissioner Rebecca Wyke to prepare legislation that would require each component of state government to develop its own code of ethics and conduct. During the 2007 session, the legislation was enacted as P.L. 2007, Chapter 107. The law requires agencies to develop an ethics code "to guide the operations and financial administration of each particular entity." (5 M.R.S.A. § 1547(8)) The State Controller may ensure that agencies have complied with their code as it applies to financial administration.

## **Agency Policies on Information Technology**

State agencies are required to adopt a policy concerning use of state-owned technology equipment (e.g., computers, e-mail, telephones, voicemail, and fax machines). The policy prohibits employees from using state-owned equipment for inappropriate or unprofessional materials. Also, employees are advised that any personal use of state-owned equipment and resources must be incidental in nature. The Commission's internal policy, which is essentially the state's model policy, is in the appendix.

## **Outside Employment**

Some states have statutes which prohibit state employees from holding another job that is inconsistent with the employee's public duties. Maine does not have a similar state-wide statute.

### *Bargaining Agreements*

However, bargaining agreements between the state of Maine and the Maine State Employees Association contain an article forbidding employees from outside employment which would constitute a conflict of interest with their state positions:

#### **ARTICLE 46. OUTSIDE EMPLOYMENT**

Employees may engage in other employment outside of their State working hours so long as the outside employment does not involve a conflict of interest with their State employment. Whenever it appears that any such outside employment might constitute a conflict of interest, the employee is expected to consult with his/her appointing authority or other appropriate agency representative prior to engaging

in such outside employment. Employees of agencies where there are established procedures concerning outside employment for the purpose of insuring compliance with specific statutory restrictions on outside employment are expected to comply with such procedures. (2007-09 Professional and Technical Services Bargaining Unit Contract, page 44)

The term conflict of interest is not defined in the bargaining agreement, but it puts the employee on notice that he or she should check with their agency about restrictions on outside employment.

#### *Provisions in State Contracts with Vendors*

When state departments contract with outside vendors to receive services, the contracting process is governed by procedures of the Division of Purchases. Under those procedures, contracts must include standard language (boilerplate) to protect the interests of the state. Rider B, paragraph 11 imposes restrictions on the freedom of a vendor to hire current or former state employees.

Under this contractual language, the vendor may “not engage any person in the employ of any State Department or agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104 [conflict of interest].” In addition, the vendor must receive written consent of the State Purchases Review Committee before hiring any other state employee during the time period covered by the contract, even if the proposed employee does not create a conflict of interest under the statutes.

## PART IV. RECOMMENDATIONS

Because the Ethics Commission currently does not have jurisdiction over ethical issues in the executive branch, it is not well positioned to know about individual instances of ethical misconduct or systemic problems that could be remedied by statutory changes. At their July 30, 2009 meeting, the members of the Ethics Commission expressed the view that decisions on statutory improvements would best be made by the Legislature based upon its current oversight of the departments of state government. The Legislature's Office of Program Evaluation and Governmental Accountability (OPEGA) may be a helpful resource for the Legislature in determining the scope of any problem, because of the audits and reports on agency performance conducted by OPEGA since 2005. **In addition, the Attorney General's Office often fields questions and requests for advice regarding the applicability of the laws summarized in this report.**

### **A. Better educational resources for executive branch employees**

The Commission recommends that the Legislature encourage the executive branch to take some straightforward steps to make executive branch employees more aware of existing ethics statutes and policies. Easier access to these authorities could only help promote ethical conduct and strengthen the grounds for discipline when an employee's activities fall short. The Commission believes that the following actions by the executive branch would be feasible, even during this period of reduced state resources.

- The Bureau of Human Resources (BHR) or other subdivision of the Department of Administrative and Financial Services (DAFS) should establish an ethics section on its website for state employees. The website should be viewable to the public and there should also be hyperlinks to this section from the "Intranet" that is currently available to state employees.

The Commission recommends that the website contain *plain language* explanations of the applicable statutes and policies, along with hyperlinks to the statutes and policies. The website should also encourage executive branch employees to seek guidance on ethics issues from the appropriate human relations manager within the agency or BHR.

- Another option is for BHR or DAFS to create an on-line ethics training consisting of slides covering different topics (gifts, conflicts of interest, etc.), similar to a power-point presentation. The Texas Ethics Commission has created a simple, easy-to-follow online ethics training slideshow for executive branch employees and legislative branch employees ([www.ethics.state.tx.us/main/training.htm](http://www.ethics.state.tx.us/main/training.htm)). The training consists of about 45 slides, and the Commission's website advises that it takes 30 minutes to read. The training could be posted on the BHR or DAFS website as a reference tool for employees who have a question, or it could be available

as a training resource if particular agencies wish their new employees to take the training.

- When new executive branch employees are hired, they typically receive one-day training in the employment policies of the state from BHR or DAFS. In the experience of the Commission staff, a large number of topics are covered in these trainings. It would be understandably difficult to add in-depth guidance about a new topic such as ethics statutes and policies. Accordingly, the Commission recommends that BHR or DAFS introduce a two-page flyer in the written materials received by all new executive branch employees that will provide them with a brief overview of ethics issues and notice of the electronic resources that are available on the BHR or DAFS website.
- Agency managers have an important role in encouraging ethical behavior, answering questions about ethics issues, and in disciplining employees when problems arise. When managerial employees are hired, they undergo more thorough training that includes topics such as progressive discipline. The Commission recommends that BHR or DAFS include written materials on ethics issues in the training materials.
- Finally, the Commission recommends that BHR or DAFS send an annual or biennial communication to executive branch employees reminding them

of the availability of information on ethics issues on the BHR or DAFS website. An electronic newsletter circulated by e-mail could be a useful format, because it could contain hyperlinks to the topics on the BHR or DAFS website.

### **B. Centralization of existing ethics statutes**

One difference between ethics statutes in Maine and in other states is that Maine does not have a single, consolidated code that governs the ethics of executive branch employees.<sup>1</sup> Rather, as described in Part III of this report, the restrictions are in the Criminal Code, Title 5, and other non-statutory authorities. **The Commission suggests that the Legislature consider centralizing existing statutes in an ethics code that would provide guidance for executive branch employees in a single location in statute. [Option A.]**

**[Option B.** The Commission does not view this as a defect. Nevertheless, if the Legislature views current statutory law as inadequate, it could consider centralizing existing statutes in an ethics code that would provide guidance for executive branch employees in a single location in statute.]

### **C. Gift law**

Some states have a **civil “gift law” (i.e., separate from laws defining bribery or improper gifts as a crime)**, that prohibits public officials from accepting something

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<sup>1</sup> *E.g.*, the Connecticut Code of Ethics for Public Officials in Chapter 10 of the Connecticut General Statutes, or Ethics in Public Service, Chapter 42.52 of the Revised Code of Washington.

of value from someone intending to influence the official in the performance of their duties. It is not unusual for the staff of the Maine Ethics Commission to receive telephone calls from out-of-state attorneys or consultants who are trying to confirm whether Maine has a similar civil statute. The Commission has no view as to whether the absence of a civil “gift law” in Maine statute is a deficiency, and is not making a recommendation in this area. Nevertheless, this is a difference between Maine’s ethics laws and the laws of some other states.

If the Legislature is interested in considering enacting a gift law, one informational resource is the “50-State Table of Gift Laws” compiled by the Center for Ethics in Government of the National Conference of State Legislatures ([www.ncsl.org/default.aspx?tabid=15316](http://www.ncsl.org/default.aspx?tabid=15316)). Although the table relates to restrictions on gifts to legislators, many of the statutes are worded generally to apply to public servants in the different branches of state governments. It provides a good overview of the different classes of donors that are under restrictions (e.g., lobbyists, contractors) in the various states and the exceptions to those restrictions.

Thank you for your consideration of this report.