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ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

February 17, 1981

The Honorable Judy C. Kany
State Representative
State House
Augusta, Maine 04333

Dear Representative Kany:

This will respond to your inquiry as to whether a member of the Maine Legislature may solicit contributions, principally in the form of foundation grants, for the Kennebec River Future Commission. Subject to the limitations set forth below, we see no legal problems with such conduct.

By way of background, there is presently pending before the 110th Legislature a bill, Legislative Document No. 272, which would establish the Kennebec River Future Commission (hereinafter the "Commission"). Generally speaking, the purpose of the Commission would be to make certain determinations regarding the uses and regulation of the Kennebec River and to recommend to the Legislature "any changes necessary to ensure the highest and best use of the water resources within the Kennebec River Corridor." If the bill is enacted in its present form, the Commission would have broad authority to accept funds to perform its statutory duties.

Sec. 10. Acceptance of funds. The commission is authorized to accept funds from any agency of the United States, from any private foundation and from any other public or private source for the purposes of carrying out this Act.

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We understand that your question is prompted by the fact that you would like to assist in raising funds for the Commission by soliciting money from foundations and other possible contributors. Furthermore, although the Commission probably could not be formed until sometime in September, 1981 at the earliest,^{1/} you would wish to commence fund-raising activities before the Commission officially comes into being. Finally, your activities in this regard would be on a voluntary basis and not for remuneration.

In responding to your inquiry, we must initially address your lack of authority to accept funds on behalf of the Commission. Once the Commission is formed, the simplest solution would be to obtain its agreement to accept the contributions you are able to secure.^{2/} Prior to that time, however, Maine law would require that grants or gifts for the Commission's use be accepted by the Governor, 2 M.R.S.A. § 5, or by the Legislative Council, 3 M.R.S.A. § 162(16). In fact, to avoid any question as to who has the authority in this instance, we would strongly recommend that you procure the assent of both the Governor and the Legislative Council to the receipt of the funds.

It is also necessary to determine whether your status as a legislator presents any problems with respect to your proposed fund-raising activities. As a general proposition, the solicitation of money by a legislator must be viewed against 1 M.R.S.A. § 1014 ("Conflict of interest") and 17-A M.R.S.A. c. 25 ("Bribery and Corrupt Practices"). Our review of these statutes leads us to conclude that they do not establish a blanket prohibition against your raising funds for the Kennebec River Future Commission. Having so concluded, we would nonetheless suggest that you limit your activities in two respects, which we shall proceed to describe.

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- ^{1/} Since L.D. 272 is a nonemergency measure, it would not, if enacted, become effective until 90 days after the adjournment of the First Regular Session of the 110th Legislature. Me. Const. Art. IV, pt. 3, § 16. Using recent history as a guide, we assume the effective date of the enabling legislation would be sometime in September, 1981.
- ^{2/} This assumes that the enacted legislation will contain the same authorization to accept funds as is presently found in the bill.

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Our first suggestion pertains to gifts from certain types of donors. Both the conflict of interest statute and the bribery and corrupt practices provisions evidence a legislative concern about gifts to public servants from persons who either are, or may appear to be, attempting to influence the public servant. This concern is most clearly reflected in 17-A M.R.S.A. § 605(1)(A) which provides as follows:

Being a public servant he solicits,
accepts or agrees to accept any pecuniary
benefit from a person who he knows is or
is likely to become subject to or interested
in any matter or action pending before or
contemplated by himself or the governmental
body with which he is affiliated;

While it could reasonably be argued that your fund-raising for the Commission could never violate section 605, it might be advisable to take a more cautious approach and to avoid seeking contributions from persons who fall within the language quoted above.^{3/}

Our second suggestion relates to the manner in which the funds are solicited. We would recommend that unless authorized to do so, you avoid the impression that you are seeking the money on behalf of either the Legislature or the Governor.^{4/} Our purpose in offering this admonition is to eliminate any possibility that your conduct could be deemed violative of 17-A M.R.S.A. § 608, on the theory that you would be committing an unauthorized act

^{3/} We would offer the same observation with respect to 1 M.R.S.A. § 1014(1)(A) which makes it a conflict of interest for a legislator to accept gifts "where it is known or reasonably should be known that the purpose of the donor in making the gift is to influence the Legislator in the performance of his official duties or vote, or is intended as a reward for action on his part."

^{4/} We raise this point because the requirement that gifts be accepted by the Governor or Legislative Council might create the impression that you are acting as the agent of the Governor or Legislature in soliciting the funds.

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with the intention to benefit another. Once again, this advice may reflect an excess of caution, but particularly where caution will not hinder your efforts, we think it justified.

Subject to the caveats set forth above, we perceive no legal problems in your proposed fund-raising activities. I hope this information is helpful.

Sincerely,

Stephen L. Diamond

STEPHEN L. DIAMOND
Deputy Attorney General

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