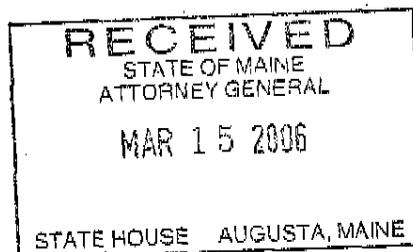




STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

March 9, 2006

The Honorable Thomas B. Saviello  
2 State House Station  
Augusta, Maine 04333-0002



Dear Representative Saviello:

This letter is in response to your request for an advisory opinion, pursuant to 1 M.R.S.A. §1013 (1)(A) and (2)(A), on whether your employment as the Environmental Manager for International Paper disqualifies you from serving on the Legislature's Natural Resource Committee.<sup>1</sup> At its public meeting on February 23, 2006, the Commission considered whether it should recommend to the Speaker of the House of Representatives that your employment caused such an inherent conflict of interest that you should not be allowed to sit on the Natural Resources Committee. The Commission decided unanimously that your employment status by itself should not prohibit you from serving on the Natural Resources Committee.

The Commission only considered your status without reference to your past conduct or activities regarding the Department of Environmental Protection ("DEP"), specific legislation, or other legislative efforts. Prior to and at its February meeting, the Commission was made aware of allegations with respect to your conduct as a member of the committee of jurisdiction of the DEP, which regulates your employer. The Commission did not consider the allegations at the meeting and does not address them in this opinion.<sup>2</sup> The Commission retains the option of conducting an investigation in the event that a Legislator files a complaint with the Commission or that the Commission decides, upon its own motion, to take up an investigation.

With its focus solely on your employment status, the Commission based its decision on three considerations. At the heart of the Commission's decision are respect for Maine's citizen legislature and recognition of potential tension between a Legislator's public duty and private

<sup>1</sup> In your letter, received by the Commission on January 9, 2006, you also requested that the Commission investigate certain allegations that you exchanged your vote on proposed legislation for the withdrawal of a notice of violation from the Maine Department of Environmental Protection. Subsequently, at the February 23<sup>rd</sup> meeting, you asked to withdraw this request. The Commission voted (4-0) to accept your request. This opinion does not address any allegations regarding specific conduct or activities as a Natural Resources Committee member or as a Legislator.

<sup>2</sup> The Commission voted (4-0) to not take action on the Commission's own motion to investigate your actions regarding an alleged *quid pro quo* deal with International Paper and the Department of Environmental Protection and to table further inquiry with respect to a third party complaint filed with the Commission.

employment. The "Statement of Purpose" in Maine's legislative ethics law acknowledges that the "increasing complexity of government... with broader intervention into private affairs, makes conflicts of interests almost inevitable...."<sup>3</sup> This possibility for conflicts results because "[m]ost Legislators must look to income from private sources, not their public salaries, for their sustenance and support of their families...."<sup>4</sup> However, the knowledge and expertise that Legislators bring from their private and professional lives has great value in the legislative process. To bar certain Legislators from sitting on committees with jurisdiction over their professions or employers would deprive a committee of relevant knowledge and expertise where they can be most useful. Indeed, a review of present and past committees would show that many members with specialized knowledge and experience have been assigned to committees having jurisdiction over their profession or even employers. We do not see your assignment to the Natural Resources Committee as inconsistent with the Legislature's past practice regarding committee assignment or as a *per se* conflict of interest.

The foremost obligation of a Legislator is to represent the interests of the people in his or her district. Your situation presents a case where your dual roles -- as Legislator and as Environmental Manager for International Paper -- could give rise to a question as to whom you serve in taking a position on legislation or otherwise performing your job as a Legislator. In many instances, the concerns of your constituents and of the paper industry are naturally aligned. It is not difficult to imagine situations in which you would support legislation that benefits your employer and the paper industry by improving Maine's business climate, and benefits your constituents by making their jobs more secure. In some of these situations, you may wish to consider recusing yourself to avoid any appearance of impropriety. However, in general, the mere fact that your actions may address the concerns of both your constituents and your employer is not enough on its own to present an unmistakable conflict of interest.

Finally, the Commission considered the process of legislative committee assignment and of the legislative process itself. The Speaker of the House takes many factors into account in making committee assignments. One is the expertise and knowledge of a particular Legislator that will bring a depth of understanding on the subjects of the committee's jurisdiction. Another factor is making committee assignments that will maintain a balance of interests and perspectives within the committee. A committee member can try to persuade his or her fellow committee members towards a specific outcome, but still has only one vote. In your case, twelve other Legislators sit on the Natural Resources Committee representing a variety of perspectives on environmental concerns. The structure and processes of committees and the House are designed to limit the power of any one Legislator and to promote debate and proper consideration of proposed legislation.

Though we do not address them in this opinion, the allegations against you indicate a perception, among some members of the public, that some of your legislative activities have constituted a conflict of interest. "If public confidence in government is to be maintained and enhanced, it is not enough that public officers avoid acts of misconduct. They must also scrupulously avoid acts which may create an appearance of misconduct."<sup>5</sup> The Legislature has set a high bar for itself

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<sup>3</sup> 1 M.R.S.A. §1011

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

but a necessary one to keep the public's trust and respect. The Legislature also recognized that laws and guidelines will not dispose of every ethical dilemma facing Legislators and stated that "the resolution of ethical problems must indeed rest largely in the individual conscience."<sup>6</sup> Though we do not find an inherent conflict of interest rising from your employment status, we recommend that you carefully consider whether you should recuse yourself from voting on particular matters which affect your employer to avoid the appearance of misconduct.

Sincerely,



Jean Ginn Marvin  
Chair

cc: The Honorable John Richardson

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<sup>6</sup> *Id.*