

Agenda

Item #12



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

To: Commission Members
From: Jonathan Wayne
Date: November 30, 2007
Re: Proposed Report to the Joint Standing Committee on Legal and Veterans Affairs

As you know, one duty of the Ethics Commission is to receive complaints concerning legislative ethics. The areas within the Commission's jurisdiction are conflicts of interest, undue influence on an administrative agency, and abuse of position. Few complaints are filed. Resolve, Chapter 81 of the Public Laws of 2007 directed that the Executive Director of the Commission submit a report concerning legislative ethics complaints to the Joint Standing Committee on Legal and Veterans Affairs.

The background for the resolve is that in January 2006, the Presiding Officers of the Maine Legislature announced their intention to establish an advisory committee to examine Maine Statutes related to legislative ethics. The committee consisted of current and former Legislators, former presiding officers, accomplished members of the public, and citizen lobbyists. Phyllis Gardiner (as the designee of the Attorney General) and I were non-voting, *ex officio* members of the committee.

The Advisory Committee met several times between June and December 2006. The views of the members varied widely, and consensus was sometimes difficult. The Advisory Committee issued a final report on December 5, 2006, which included proposed legislation. The legislation was introduced in the 2007 session as L.D. 1008. After holding a public hearing and work session, the Legislature replaced the original language in the bill with the language in Resolve, Chapter 81.

I have attached a proposed draft report for your consideration. The Legislature directed me to provide the report, rather than the Commission. Nevertheless, some parts of the report suggest that the recommendations are from the Commission, and I am proposing that you approve the report. If you prefer otherwise, please let me know.

I need to highlight one issue in the report that may cause sharp concern with some members of the Legislature. Current law contemplates that the Commission may receive complaints only from Legislators. The report proposes that members of the general public should also be permitted to file complaints. You may wish to consider whether the Commission should make this proposal, given the challenges to enactment.



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DRAFT

To: Joint Standing Committee on Legal and Veterans Affairs

From: Jonathan Wayne, Executive Director

Date: December __, 2007

Re: Report on History of Legislative Ethics Complaints and Sufficiency of Existing Law

Resolve, Chapter 81 of the Public Laws of 2007 directed that the Executive Director of the Maine Commission on Governmental Ethics and Election Practices submit a report concerning legislative ethics complaints to the Joint Standing Committee on Legal and Veterans Affairs:

Sec. 1 Commission on Governmental Ethics and Election Practices to provide historical data regarding receipt and resolution of complaints pertaining to legislative ethics violations. Resolved: That the executive director of the Commission on Governmental Ethics and Election Practices shall provide to the Joint Standing Committee on Legal and Veterans Affairs the number of legislative ethics complaints received during the past 10 years, from whom the complaints were received, the extent of any investigation into any complaint and the final resolution of the complaints. In addition to the historical data, the executive director shall report whether or not the existing laws regarding legislative ethics and the authority granted to the Commission on Governmental Ethics and Election Practices are sufficient to properly resolve legislative ethics complaints or whether those laws impose barriers to effectively addressing actions that are recognized as violations of legislative ethics; and be it further

Sec. 2 Report date and authorized legislation. Resolved: That the executive director of the Commission on Governmental Ethics and Election Practices shall submit the data and report described in section 1 by February 15, 2008, including any proposed legislation. The Joint Standing Committee on Legal and Veterans Affairs is authorized to submit legislation to the Second Regular Session of the 123rd Legislature based on the information included in the report.

This memo constitutes the report required by Resolve, Chapter 81. Proposed legislation is attached as an Appendix. The report and legislation were approved by the members of the Commission at their December 7, 2007 meeting.

I. BACKGROUND ON RESOLVE, CHAPTER 81

In January 2006, the Presiding Officers of the Maine Legislature announced their intention to establish an advisory committee to examine Maine Statutes related to legislative ethics. The membership, activities, and recommendations of the Presiding Officers' Advisory Committee on Legislative Ethics are described on the website of the Speaker of the Maine House of Representatives, <http://speaker.maine.gov/ethics/index.html>.

The Advisory Committee issued a final report on December 5, 2006, which included proposed legislation. The report also recommended changes to the Legislature's rules to encourage disclosure by Legislators when their actions might appear to involve a conflict of interest. The Committee also suggested better training of Legislators on ethics issues.

The Commission's Counsel (as the designee of the Maine Attorney General) and I were non-voting, *ex officio* members of the committee. We assisted the Presiding Officers' staff in working on the proposed legislation that was attached to the report. The legislation was introduced in the 2007 session as L.D. 1008. After holding a public hearing and work session, the Legislature replaced the original language in the bill with the language in Resolve, Chapter 81.

II. HISTORY OF LEGISLATIVE ETHICS COMPLAINTS

During the past 10 year, the Ethics Commission has received four complaints concerning legislative ethics that were within the Commission's jurisdiction. In addition, the Commission's former director, William Hain, requested that the Commission consider one matter on his own initiative. Under 1 M.R.S.A. §§ 1013(2)(J) and (3), legislative ethics complaints filed with the Commission must be kept confidential until the Commission decides to hold a public hearing to consider the complaint. The information below is therefore general.

Complaint #1

Year: 1998

Complainant: member of the public

General Issue: The complainant was employed in a workplace in which the employees were scheduled to vote on a decision to unionize. The complaint was that it was inappropriate for two members of the Maine Legislature to write a

letter on legislative stationery encouraging employees to vote “yes” on the decision.

Extent of Investigation: The Commission staff requested that the Legislators respond to the complaint. The Commission held a meeting in executive session.

Final Resolution: Following the executive session, the Commission voted to dismiss the complaint. The Commission also decided to communicate with legislative leadership regarding the permissible uses of legislative stationery.

Complaint #2

Year: 2001

Complainant: The Commission’s former executive director, William Hain, initiated the matter. No complaint was filed.

General Issue: Mr. Hain alleged that a Legislator had influenced campaign finance legislation that would affect a penalty matter relating to the Legislator.

Extent of Investigation: The Commission requested a response from the Legislator. The Commission held a meeting in executive session.

Final Resolution: Following the executive session, the Commission voted to dismiss the matter.

Complaint #3

Year: 2006

Complainant: Advocacy organization

General Issue: The complaint alleged that a Legislator had influenced legislation relating to the Legislator’s employer and personal employment. The complaint also alleged that the Legislator had unduly influenced an administrative agency regarding a penalty matter relating to the Legislator’s employer.

Extent of Investigation: The Commission staff requested a response from the Legislator. The staff also interviewed persons with knowledge of the facts of the complaint. The Commission considered a large volume of documents from the complainant, two interested organizations, and from the Legislator. The Commission held meetings in executive session.

Final Resolution: The Commission voted 2-2 not to hold a public hearing regarding the matter.

Complaint #4

Year: 2006

Complainant: Member of the public

General Issue: The complaint alleged that a Legislator had influenced legislation that affected the employment of the Legislator's spouse.

Extent of Investigation: After receiving the complaint, the Commission staff requested a written response from the Legislator. The staff also spoke with the complainant and considered documents provided by the complainant. The Commission held a meeting in executive session, and heard presentations from the complainant and the Legislator.

Final Resolution: The Commission determined that the complaint did not have merit, and voted not to take any action on the complaint.

Complaint #5

Year: 2006

Complainant: Member of the public

General Issue: The complainant had interacted with the Legislator as an attorney representing the complainant's opponent in civil litigation involving property damage. The complainant believed that the Legislator influenced legislation that might affect the lawsuit.

Extent of Investigation: After receiving the complaint, the Commission staff requested a written response from the Legislator. The staff also interviewed the complainant and considered documents provided by the complainant. The Commission held a meeting in executive session, and heard presentations from the complainant and the Legislator.

Final Resolution: The Commission determined that the complaint did not have merit, and voted not to take any action on the complaint.

III. SUFFICIENCY OF EXISTING LAWS

The Commission believes that the existing procedural laws governing the handling of legislative ethics laws are mostly adequate, but they could be improved. Five key issues are discussed below. In the Appendix to this memo, the Commission has attached proposed changes to 1 M.R.S.A. § 1013 which would address Issues #1 - #4. The legislation is based closely on section 6 of L.D. 1008. Any proposed language that was drafted by the Commission and was not part of L.D. 1008 is shaded in gray.

Issue #1: Permitting Ethics Complaints from the Public

Current law contemplates that the Commission will receive complaints about legislative ethics only from Legislators:

1. **Authority.** The commission shall have the authority: ...

B. To investigate complaints filed by Legislators, or on its own motion, alleging conflict of interest against any Legislator, to hold hearings thereon if the commission deems appropriate and to issue publicly findings of fact together with its opinion; (1 M.R.S.A. § 1013(1)(B))
(underlining added)

In rare instances, this restriction could easily be a barrier to the Commission's consideration of legislative ethics violations. It is not hard to imagine circumstances in which someone other than a Legislator would learn of information suggesting a conflict of interest, undue influence, or abuse of position, and wish to file a complaint directly with the Commission without turning to a Legislator. First, the person may not know a Legislator or may not feel comfortable asking a Legislator to complain about a colleague. Even if the person is willing to approach a Legislator, there may be personal or political reasons that would inhibit a member of the Maine Legislature from filing a complaint against a fellow member.

The Commission proposes that individuals other than Legislators should be permitted to file complaints. It suggests the same statutory language that was included in L.D. 1008:

Any person may file a complaint against a Legislator alleging a violation of legislative ethics. The complaint must be filed in writing and signed under oath and must specify the facts of the alleged violation and such other information as the commission requires.

In those rare instances in which a Legislator is in a conflict of interest, permitting individuals other than Legislators to file complaints will increase the chances that the Commission will consider the facts of the situation and will submit findings of fact and an opinion to the Legislature that could prevent similar missteps in the future.

The Commission is aware of the concern that the proposed change might invite complaints that are frivolous or politically motivated. The Commission is hopeful that this would not come to pass. The current law contains a disincentive against filing a groundless complaint: the Commission can order the complainant to pay legal and other costs incurred by the Legislator in responding to the complaint. (1 M.R.S.A. § 1013(2)(G)) The filing of a false charge of a conflict of interest, which the complainant does not believe to be true (or inducing another to do so) is a Class E crime. (1 M.R.S.A. § 1020) There are additional disincentives to filing a politically motivated or malicious complaint. All complaints must be kept confidential until the Commission has decided to hold a public hearing on the complaint. (See Issue #4 below.) A breach of that confidentiality requirement would be a Class D crime. Thus, from the outset, a complainant seeking to harm a Legislator in the public's eye cannot bring the complaint to the attention of the public or the press. If a complaint is frivolous or politically motivated, the Commission likely will not hold a public hearing on the complaint, and the complainant would be required to keep the complaint confidential permanently. In addition, complaints must be made under oath and there are penalties in the Maine Criminal Code for making false material statements under oath in an official proceeding. (17-A M.R.S.A. § 452) These provisions of existing law could remove the advantage or result the complainant seeks in filing a frivolous or politically motivated complaint.

If the Legislature does not want to allow complaints by the public, it is important to note that existing law does permit the Commission to investigate complaints on its own motion. So, if the Commission receives a meritorious complaint from someone other than a Legislator, current law does not prevent the Commission from considering the issues contained within the complaint.

Issue #2: Conduct from a Previous Legislature

Under existing law:

Only those complaints dealing with alleged conflicts of interest related to the current Legislature shall be considered by the commission. (1 M.R.S.A. § 1013(2)(B))

Some Legislators have expressed that it is sensible to have a statute of limitations on the filing of legislative ethics complaints, so that complainants are encouraged to come forward with reports of misconduct and not to sit on their hands. On the other hand, it is easy to foresee a circumstance in which the current-legislature restriction could be a barrier to the Commission considering a meritorious complaint. For example, if the Legislator's actions occurred toward the end of a Legislature, it may be impossible for a complainant to learn of the conduct until after the beginning of the next Legislature. In that circumstance, the Commission would lack jurisdiction to hear the complaint.

The Commission proposes that the statute be amended to grant it jurisdiction to consider complaints based on activity that occurred or was continuing within two years of the filing of the complaint. The Commission draws its proposal from L.D. 1008:

The commission shall consider only complaints against Legislators in office at the time of the filing of the complaint and only complaints relating to activity that occurred or was ongoing within 2 years of the complaint.

It could be argued that the statute of limitations should be longer than two years. Nevertheless, the Commission proposes a two-year period because it was a compromise that was found acceptable by a majority of members of the Advisory Committee.

Issue #3: Procedures for Screening Complaints and Holding a Public Hearing

Under existing law, when a complaint is filed, the Commission must provide a copy of the complaint to the Legislator whose conduct is at issue. The Commission may conduct an investigation and hold a public hearing as it deems necessary. The Legislator also has a right to request a public hearing. (1 M.R.S.A. § 1013(2)(B) and (E)) If a hearing is held, the Legislator has the right to call witnesses and to cross-examine witnesses. (1 M.R.S.A. § 1013(2)(D)) After the hearing, the Commission must issue findings of fact and an opinion to the legislative chamber of which the Legislator is a member. That chamber is authorized to take any action it believes is appropriate. (1 M.R.S.A. § 1013(2)(B)) The Commission is not authorized to take any punitive action against the Legislator.

The Commission believes the current hearing procedures contained in 1 M.R.S.A. § 1013(2)(C) - (E) should be improved. They do not provide any direction to the Commission regarding how it should decide whether to conduct an investigation or hold a hearing. If the Commission decides to hold a hearing, it is required to subpoena such witnesses as the complainant requests, which may be unnecessary and disadvantageous to the administration of the proceedings. Other than being able to call witnesses, the role of the complainant is not completely clear. The procedures contain an unusual provision that *any* person who believes that they have been adversely affected by testimony in the hearing has the right to testify at the hearing.

The attached proposal by the Commission is based on L.D. 1008, and is intended to clarify the screening process and hearing procedures. Once a complaint is filed the Commission shall provide the Legislator with an opportunity to respond. The Commission shall hold a meeting in executive session to decide whether to conduct an investigation or conduct a hearing. The Legislator may attend the meeting and present such evidence as the Commission deems appropriate. The Commission has the discretion to allow a complainant to attend the meeting and to present oral argument, but it is not required to do so.

The proposal requires the Commission to conduct a rulemaking to establish procedures for legislative ethics investigations and hearings. It also specifies that if the Commission decides to hold a hearing on a complaint, the Commission may, by order, grant the complainant or other interested persons full or limited party status, but the Commission is

not required to do so. Limited party status means that the Commission would control the ability of the party to call witnesses, cross-examine witnesses, or present evidence.

Issue #4: Confidentiality of Complaints

Under 1 M.R.S.A. §§ 1013(2)(J) and (3), legislative ethics complaints filed with the Commission must be kept confidential until the Commission decides to hold a public hearing to consider the complaint. This confidential screening process seems designed to strike a balance between identifying meritorious claims of conflicts of interest and not creating a forum that would encourage complaints that are uninformed or ill-motivated. Under this design, complaints that present a genuine question of a conflict of interest will receive a public hearing. If the complaint is based on a poor understanding of the law or bad faith, the complaint will be dismissed and will not be heard publicly and will remain confidential. This screening process is not unlike private confidential screening processes in other ethics enforcement schemes.

The Commission staff has recommended applying the current confidentiality provisions in 1 M.R.S.A. §§ 1013(2)(J) and (3) as follows:

Step A	A complaint alleging a conflict of interest is filed with the Commission.	Confidential
Step B	The Commission staff provides a copy of the complaint to the Legislator, and the staff requests a preliminary written response on the issue of whether the Commission should hold a hearing and whether an ethics violation occurred.	Confidential
Step C	The staff may conduct preliminary fact-gathering.	Confidential
Step D	The Legislator responds to the staff request.	Confidential
Step E	The Commission holds a meeting in executive session to decide whether to hold a public hearing to consider the complaint. If the Commission decides not to hold a hearing, the matter would remain confidential permanently.	Confidential
Step F	The Commission holds a public hearing and conducts any further investigation it deems necessary.	Public
Step G	The Commission issues findings of fact and opinion.	Public

If the Commission decides to hold a hearing, the hearing would be public, including all records presented at the hearing even if they were generated as part of Steps A - E.

The Commission’s legislative proposal seeks to maintain this basic structure and to clarify the procedures. It is based on L.D. 1008 with some minor modifications.

Issue #5: Definition of Legislative Conflict of Interest

Resolve, Chapter 81 directed that the Commission comment on current procedures for handling complaints and did not specifically invite the Commission to comment on the definition of conflict of interest. Nevertheless, some comment seems appropriate for this report, because a lack of clarity regarding what is a conflict of interest can provide insufficient guidance to Legislators and can hamper the Commission's consideration of a complaint.

In the view of the Commission staff, the different standards contained within 1 M.R.S.A. § 1014(1) cause confusion in the interpretation and application of the statute. For example, if a Legislator is going to receive a benefit from proposed legislation that would affect his employment, must the benefit be "unique and distinct" to qualify as a conflict (paragraph 1(F)) or merely "distinct" (paragraph 1(E)). To which population should the Legislator be compared: is it the "general community" (paragraph 1(E)), the "general public" (paragraph 1(F)), or individuals in the same profession or employment as the Legislator (paragraphs 1(E) and (F))?

Paragraph 1(A) covers a situation in which an "enterprise" that is affiliated with a Legislator (*e.g.*, a business or nonprofit) is affected by proposed legislation. Unlike paragraphs 1(E) and (F), paragraph 1(A) does not indicate what degree of benefit or loss results in a conflict of interest.

The statutory proposal by the Presiding Officers' Advisory Committee attempted to resolve this confusion and to *broaden* the scope of what is a conflict of interest. A majority of members of the Advisory Committee found the "unique and distinct" standard to be "very narrow, making it highly unlikely that a legislator would ever be restrained by conflict of interest rules." (Final Report, page 4)

Some members of the Advisory Committee, however, opposed broadening the definition. They expressed that they do not want to reduce the expertise that some Legislators bring to discussion of policy issues based on their personal employment, do not want to discourage participation in the Legislature, and do not believe that there is a significant problem with conflicts of interest in the Maine Legislature.

The experience of the Advisory Committee demonstrates how difficult it can be to reach a consensus about how to define a legislative conflict of interest. People of good will who are equally concerned about governmental ethics may easily reach different conclusions about how Maine's citizen legislature ought to operate. If the Legislature is interested in reconsidering the proposal by the Presiding Officers' Advisory Committee, the language is available in section 7 of L.D. 1008. In addition, press reports seem to indicate that at least one other legislative proposal regarding what is a conflict of interest has been accepted for the 2008 legislative session.

Thank you for your consideration of this report. Please let me know if the Commission or its staff can provide further assistance to the Legal and Veterans Affairs Committee as it considers these issues.

An Act To Improve the Legislative Ethics Laws

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

Sec. 1. 1 MRSA §1013, as amended by PL 1989, c. 561, §§5 and 6, is further amended to read:

§ 1013. Authority; procedures

1. **Authority.** The commission ~~shall have the~~has authority:

A. To issue, on request of any Legislator on an issue involving ~~himself~~that Legislator, or on its own motion, written advisory opinions and guidelinesguidance on problems or questions involving possible conflicts of interest;

B. To investigate complaints ~~filed by Legislators, or on its own motion,~~ alleging conflict of interest against any Legislator, to hold hearings ~~thereon~~on those complaints if the commission ~~deems~~ determines it appropriate and to issue publicly ~~findings of fact together with its opinion;~~ and

C. To administer the disclosure of sources of income by Legislators as required by this subchapter.

2. **Procedures.** The following procedures ~~shall~~ apply:

A. Requests for advisory opinions by members of the Legislature ~~shall~~must be filed with the commission in writing, and signed by the Legislator requesting the opinion and ~~shall~~must contain such supporting data as the commission ~~shall require~~requires. When preparing an advisory opinion on its own motion, the commission shall notify the Legislator concerned and allow ~~him~~the Legislator to provide additional information to the commission. In preparing an advisory opinion, either upon request or on its own motion, the commission may make such an investigation as it ~~deems~~determines necessary. A copy of the commission's advisory opinion ~~shall~~must be sent to the Legislator concerned and to the presiding officer of the ~~House~~legislative body of which the Legislator is a member;

B. ~~A Legislator making a complaint shall file the complaint under oath with the chairman. The complaint shall specify the facts of the alleged conflict of interest. The Legislator against whom a complaint is filed shall immediately be given a copy of the complaint and the name of the complainant. Only those complaints dealing with alleged conflicts of interest related to the current Legislature shall be considered by the commission. Upon a majority vote of the commission, the commission shall conduct such investigation and hold such hearings as it deems necessary. The commission shall issue its findings of fact together with its opinion regarding the alleged conflict of interest to the House of which the Legislator concerned is a member. That House may take whatever action it deems appropriate, in accordance with the Constitution of the State of Maine. Any person may file a~~

complaint against a Legislator alleging a conflict of interest. The complaint must be filed in writing and signed under oath and must specify the facts of the alleged conflict and such other information as the commission requires. The commission shall consider only complaints against Legislators in office at the time of the filing of the complaint and only complaints relating to activity that occurred or was ongoing within 2 years of the complaint.

(1) The Legislator against whom a complaint is filed must immediately be given a copy of the complaint and an opportunity to respond.

(2) The commission shall hold a meeting in executive session to decide whether to pursue the complaint by conducting an investigation or holding a hearing. The commission may permit the Legislator and complainant to attend the meeting and make a presentation regarding whether the commission should conduct an investigation or hold a hearing.

(3) Upon a majority vote of the commission, the commission shall conduct such an investigation and hold such hearings as it determines necessary. If one or more seats on the commission are vacant, the vote of 2 commissioners is sufficient to order an investigation and hearings.

C. When the conduct of a particular Legislator is under inquiry and a hearing is to be held, the Legislator shall must be given written notification of the time and place at which the hearing is to be held. Such notification shall must be given not less than 10 days prior to the date set for the hearing.

D. The commission shall ~~have the~~ has authority, through its ~~chairman~~ chair or any member designated by ~~him~~ the chair, to administer oaths, subpoena witnesses and compel the production of books, records, papers, documents, correspondence and other material and records ~~which the committee deems~~ commission determines relevant. ~~The commission shall subpoena such witnesses as the complainant~~ Legislator or the Legislator against whom the complaint has been filed may request to be subpoenaed. The State, its agencies and instrumentalities shall furnish to the commission any information, records or documents ~~which~~ the commission designates as being necessary for the exercise of its functions and duties. In the case of refusal of any person to obey an order or subpoena of the commission, the Superior Court, upon application of the commission, shall ~~have~~ has jurisdiction and authority to require compliance with the order or subpoena. Any failure of any person to obey an order of the Superior Court may be punished by that court as a contempt thereof.

E. ~~Any person whose conduct is under inquiry shall be accorded due process and, if requested, the right to a hearing. All witnesses shall be subject to cross examination.~~ The commission shall adopt rules consistent with due process for the conduct of investigations and hearings under this subchapter. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

~~Any person whose name is mentioned in an investigation or hearing and who believes that testimony has been given which adversely affects him shall have the right to testify, or at the discretion of the commission and under such circumstances as the commission shall determine to protect the rights of the Legislator under inquiry, to file a statement of facts under oath relating solely to the material relevant to the testimony of which he complains. Any witness at an investigation or hearing, subject to rules and regulations promulgated by the commission, shall be entitled to a copy of such testimony when the same becomes relevant to a criminal proceeding or subsequent investigation or hearings.~~

~~All witnesses shall be sworn. The commission may sequester witnesses as it deems necessary. The commission shall not be is not bound by the strict rules of evidence, but its findings and opinions must be based upon competent and substantial evidence. The commission may, by order, allow the complainant or any other interested person to intervene and participate in the hearing as a full or limited party to the proceeding. If the commission allows an interested person to participate as a limited party, the order shall state any restrictions on the party's right to present evidence, call and examine witnesses and to make oral cross-examination of witnesses.~~

~~If, after conducting a hearing or other investigation, the commission determines that the Legislator was involved in a conflict of interest, it shall issue its findings of fact together with its opinion regarding the conflict of interest to the legislative body of which the Legislator concerned is a member. That legislative body may take whatever action it determines appropriate, in accordance with the Constitution of Maine.~~

~~Time periods and notices may be waived by agreement of the commission and the person whose conduct is under inquiry.~~

F. If the commission concludes that it appears that a Legislator has violated a criminal law, a copy of its findings of fact, its opinion and such other information as may be appropriate shall must be referred to the Attorney General. Any determination by the commission or by a ~~House of the Legislature~~ legislative body that a conflict of interest has occurred does not preclude any criminal action relating to the conflict ~~which that~~ that may be brought against the Legislator.

G. If the commission determines that a complaint filed under oath is ~~groundless and without foundation~~ frivolous or was filed in bad faith, or if the Legislator ~~filing the complaint~~ complainant fails to appear at the hearing without being excused by the commission, the commission may order the complainant to pay to the Legislator against whom the complaint has been filed ~~his~~ that Legislator's costs of investigation and defense, including any reasonable attorney's fees. ~~The~~ Such an order is deemed a final agency action and the complainant may appeal such an order to the House of which he is a member pursuant to the Maine Administrative Procedure Act.

Such an order ~~shall~~does not preclude any other remedy available to the Legislator against whom the complaint has been filed, including, but not limited to, an action brought in Superior Court against the complainant for damages to ~~his~~the Legislator's reputation.

H. ~~A copy of the commission's~~The commission shall file with the Clerk of the House and the Secretary of the Senate a copy of written advisory opinions and guidelines~~guidance issued by the commission,~~ with such deletions and changes as the commission ~~deems~~considers necessary to protect the identity of the person seeking the opinions, or others, ~~shall be filed with the Clerk of the House.~~ The ~~clerk~~Clerk of the House shall keep ~~them~~a copy of such opinions and guidance in a special binder and shall finally publish them in the Legislative Record. The commission may exempt an opinion or a part thereof ~~of an opinion~~ from release, publication or inspection, if it ~~deems~~considers such action appropriate for the protection of 3rd parties and makes available to the public an explanatory statement to that effect.

I. A copy of the commission's findings of fact and opinions regarding complaints against Legislators ~~shall~~must also be filed with the Clerk of the House and the Secretary of the Senate. The ~~clerk~~Clerk of the House shall keep them in a special binder and shall finally publish them in the Legislative Record.

J. ~~The records of the commission and all information received by the commission acting under this subchapter in the course of its investigation and conduct of its affairs shall be confidential, except that Legislators' statements of sources of income, evidence or information disclosed at public hearings, the commission's findings of fact and its opinions and guidelines are public records.~~

K. When a Legislator has a question or problem of an emergency nature about a possible conflict of interest or an issue involving ~~himself which~~that Legislator that arises during the course of legislative action, ~~he~~the Legislator may request an advisory opinion from the presiding officer of the legislative body of which ~~he~~the Legislator is a member. The presiding officer may, ~~at his discretion,~~ issue an advisory opinion, ~~which shall.~~ An advisory opinion issued by the presiding officer must be in accordance with the principles of this subchapter, which shall be in writing, and which shall be reported to the commission. The commission may then issue a further opinion on the matter. The presiding officer may refer such a question or problem directly to the commission, which shall meet as soon as possible to consider the question or problem.

L. The commission shall make reasonable efforts to resolve a complaint within 90 days of its filing.

3. Confidentiality. ~~The subject of any investigation by the commission shall be informed promptly of the existence of the investigation and the nature of the charges or allegations. Otherwise, notwithstanding chapter 13, all complaints shall be confidential until the investigation is completed and a hearing ordered or until the nature of the investigation becomes public knowledge. Any person, except the subject of the~~

investigation, who knowingly breaches the confidentiality of the investigation is guilty of a Class D crime.

4. Confidentiality of records and proceedings relating to screening complaints alleging a conflict of interest. Notwithstanding chapter 13, a complaint alleging a conflict of interest is confidential and is not a public record until after the commission has voted pursuant to subsection 2, paragraph B to pursue the complaint, and a commission proceeding to determine whether to pursue a complaint must be conducted in executive session. If the commission does not vote to pursue the complaint, the complaint and records relating to the investigation of that complaint remain confidential and are not public records. This subsection does not prevent the commission from including general information about complaints in any report to the Legislature. Any person who knowingly breaches the confidentiality of a complaint investigation commits a Class D crime. This subsection does not prevent commission staff from disclosing information that is necessary to investigate a complaint.

5. Confidentiality of records other than complaints. Commission records other than complaints are governed by this subsection.

A. Investigative records relating to complaints that the commission has voted to pursue are confidential until they are provided to commission members or otherwise distributed at a public hearing of the commission.

B. Legislators' statements of sources of income are public records.

C. If the commission determines that the Legislator was involved in a conflict of interest, the commission's findings of fact and opinion submitted to the Legislature are public records.

D. Advisory opinions of the commission and requests for advisory opinions from the commission are public records, except as provided in subsection 2, paragraph H.