



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

April 30, 1998

The Honorable Joseph Bruno
House of Representatives
2 State House Station
Augusta, Maine 04333-0002

Dear Representative Bruno:

The Commission on Governmental Ethics and Election Practices met on April 8, 1998, and considered your request dated March 12, 1998, for clarification of an issue to ensure that you are operating within the most ethical guidelines as a Maine Legislator.

The essence of your concern was whether a conflict of interest developed when Gould Health Systems, of which you are President, entered into a contract to provide services to the State of Maine. After reviewing the specific facts in this situation and the applicable statute, the Commission found no conflict of interest.

You informed the Commission that you are President of Gould Health Systems; that you own no stock in that company; and that, simultaneously, you serve on the House Banking and Insurance Committee. You stated that the State of Maine Department of Human Services approached Gould Health Systems to provide emergency claims processing services to the Department on an interim basis because the original DHS contractor had served notice of withdrawal from its contract with the State before the end of its contract period. That situation created an emergency that did not permit sufficient time for DHS to procure a replacement contractor through the normal public notice and competitive bidding processes required by State law. You stated that Gould Health Systems essentially substituted for the original contractor, subject to the terms and conditions of the original contract, and that the State Division of Purchases had approved this as a sole source contract subject to the provisions of 5 M.R.S.A. § 1825-B(2).

It is the Commission's understanding that the Department of Human Services intends to follow normal procurement processes, including public notice and competitive bidding, in the future; but that those requirements were waived in this case solely because of the time constraints of such processes and the need for DHS to continue to have claims processed with minimal interruption.

The controlling statutory authority for this situation is 1 M.R.S.A. § 1014 (Conflict of Interest), Subsection 3 (Abuse of office or position), which states:

It is presumed that a conflict of interest exists where a Legislator abuses his office or position, including but not limited to the following cases.



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Paragraph A of that subsection provides:

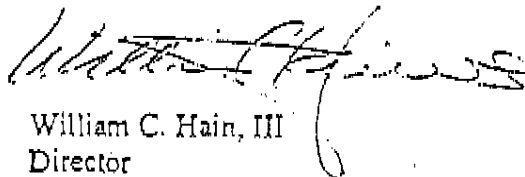
A. Where a Legislator or a member of his immediate family has a direct financial interest or an interest through a close economic association in a contract for goods or services with the State, a state agency or authority in a transaction not covered by public notice and competitive bidding or by uniform rates established by the State, a state agency, authority or other governmental entity or by a professional association or organization.

The Commission discussed the applicable statutory provision, particularly the language regarding transactions not covered by public notice and competitive bidding or by uniform rates established by the State. The Commission gave significant weight to the emergency nature of the procurement action in this case, the fact that the Division of Purchases had approved the sole source contract, and the fact that Gould Health Systems essentially had been substituted for the original contractor subject to the same terms and conditions as the original contract.

You informed the Commission that you had abstained from participating in the legislative process involving specific legislation that may have involved the interests of Gould Health Systems since the inception of the interim contract between Gould Health Systems and the State of Maine. The Commission, however, noted the continuing potential for a conflict of interest in your dual positions as a State Legislator and as President of Gould Health Systems in the contractual relationship between the State of Maine and Gould Health Systems. The Commission strongly recommended that you continue to abstain from any legislative matter that may raise even the appearance of a conflict of interest during the period of the interim contractual relationship between Gould Health Systems and the State of Maine.

I hope this information has been useful to you. The Commission appreciates the prudence with which you have approached this question and will gladly extend its assistance should you need guidance in the future.

Sincerely,



William C. Hain, III
Director

Copy: Assistant Attorney General Phyllis Gardiner