

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES

In the Matters of:)	
)	
Senator [REDACTED])	ADVISORY OPINION
Senator [REDACTED])	AND RECOMMENDATIONS
Representative [REDACTED])	
)	
Legislative Ethics)	

Background and Authority

On August 31, 1988, the Commission on Governmental Ethics and Election Practices ("Commission") received a letter from [REDACTED] Chairman of the Maine Real Estate Commission, complaining of the conduct of three Legislators in connection with a proceeding before that Commission (Exhibit "A"). At its September 9, 1988 meeting, the Commission unanimously voted to investigate, on its own motion, the allegations of misconduct and to issue an advisory opinion. In so doing, the Commission was acting pursuant to the authority conferred by 1 M.R.S.A. §§ 1008(1), 1013(1)(A) and 1013(2)(A).

The Commission scheduled a public hearing for September 23, 1988 and notice was duly given to the Legislators involved and to the public. The hearing was conducted on that date in accordance with the Commission's statutory authority, 1 M.R.S.A. § 1013(2)(D) and (E), and its procedural rules.

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Present with counsel were Senators [REDACTED] and [REDACTED]. Representative [REDACTED] appeared without counsel. All members of the Commission were present throughout the full-day hearing.

Evidence

The Commission heard the testimony of [REDACTED], Chairman, Maine Real Estate Commission ("MREC"); [REDACTED], Member MREC; [REDACTED], Deputy Director, MREC; [REDACTED], Commissioner of the Department of Professional and Financial Regulation; Representative [REDACTED]; Senator [REDACTED]; Senator [REDACTED]; Senator [REDACTED]; Representative [REDACTED]; [REDACTED], and his attorney, [REDACTED]. Between them, the witnesses offered 16 numbered exhibits for the record. The Commission itself offered Exhibits A, B and C. All exhibits are indexed and reproduced separately as an appendix to this opinion.

Applicable Law

The subject of legislative ethics is governed by statute, set out in Title 1, Chapter 25 of the Maine Revised Statutes. These provisions are reproduced in their entirety in the appendix to this opinion. Of particular significance to the Commission in this proceeding are the following statutory provisions:

1 M.R.S.A. § 1014:

1. Situations involving a conflict of interest. A conflict of interest shall include the following:

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* * *

D. Appearing for, representing or assisting another in respect to a claim before the Legislature, unless without compensation and for the benefit of a citizen. (Emphasis added.)

* * *

2. Undue influence. It is presumed that a conflict of interest exists where there are circumstances which involve a substantial risk of undue influence by a Legislator, including but not limited to the following cases.

A. Appearing for, representing or assisting another in a matter before a state agency or authority, unless without compensation and for the benefit of a constituent, except for attorneys or other professional persons engaged in the conduct of their professions. (Emphasis added.)

(1.) Even in the accepted cases, an attorney or other professional person must refrain from references to his legislative capacity, from communications on legislative stationary and from threats or implications relating to legislative action.

* * *

3. Abuse of office or position. 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:

* * *

B. Granting or obtaining special privilege, exemption or preferential treatment to or for oneself or another, which privilege, exemption or treatment is not readily available to members of the general community or class to which the beneficiary belongs.

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It was these provisions defining a conflict of interest by a Legislator, as well as the mandate of 1 M.R.S.A. § 1011 that Legislators "must also scrupulously avoid acts which may create an appearance of misconduct," against which the Commission weighed the evidence received in this case.

Findings and Conclusions

Based upon the record of its public hearing, and after extensive deliberation, the Commission makes the following findings and conclusions:

1. The letter dated March 24, 1988 signed by Senator [REDACTED], Senator [REDACTED], and Representative [REDACTED] in their official capacities, and sent to the Maine Real Estate Commission addressing a particular case then pending before that agency, constituted an exercise of undue influence, in and of itself, by each of the three Legislators, regardless of whether the intended beneficiary was a "constituent" of any of the Legislators. This conclusion is based particularly upon the fact that the letter requests dismissal of a staff complaint against [REDACTED], in conjunction with a commitment by the Legislators to an expansion of the Real Estate Commission's statutory authority. A copy of the March 24 letter is attached as an exhibit to this advisory opinion.

2. The Commission rejects the claim made by all three

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Legislators that [REDACTED], as a resident of Maine, is a constituent of theirs notwithstanding that he resides in none of their electoral districts. Compare § 1014(2)(A) with § 1014(1)(D), differentiating between assistance by a Legislator to a "constituent" and a "citizen," respectively.

3. Representative [REDACTED] exercised poor judgment in signing the March 24, 1988 letter without being more familiar with its contents or having a better understanding of the context in which it was being sent. That letter was Representative [REDACTED]'s only communication with the Real Estate Commission disclosed by this investigation. There was no evidence at all that Representative [REDACTED] acted out of an improper motive, or intended to interfere with the operation of the Real Estate Commission.

4. Senator [REDACTED] also exercised poor judgment in signing the March 24, 1988 letter. Senator [REDACTED] had limited further communication with the Real Estate Commission staff in connection with the [REDACTED] case, but ceased all communication when he received documents concerning the case from the Real Estate Commission providing more detailed information about the basis and procedure involved in the handling of the case. As Chairman of the Committee on Business Legislation, Senator [REDACTED] had a legitimate interest in the disciplinary authority and procedures of the Real Estate Commission, but that interest provides no proper basis for seeking to influence the outcome of any particular case.

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5. By his own admission, Senator ██████████ was the author of the March 24, 1988 letter, and it was at his request that the letter was later signed by Representative ██████████ and Senator ██████████. Senator ██████████ made several other appeals to the Real Estate Commission's chief investigator on the ██████████ case, including calling her at home, as well as to ██████████, the Commission Chairman, and ██████████, Commissioner of the Executive Department containing the Real Estate Commission. The actions of Senator ██████████ in preparing the March 24, 1988 letter, obtaining the signatures of other Legislators, and undertaking other communications with the Real Estate Commission or persons associated with it on behalf of ██████████, were inappropriate and constitute an exercise of undue influence. The Commission concludes that Senator ██████████'s motive in intervening in the proceeding was purely to assist a friend by having a case against the friend dismissed, and considers that motive inappropriate. Senator ██████████'s testimony that he was simply seeking fair and timely treatment of ██████████ by the Real Estate Commission is contrary to the great weight of the substantial evidence, and is not accepted.

6. There is no evidence that any of the three Legislators received any compensation for the activities described above on behalf of ██████████, or undertook those actions in anticipation of any personal financial gain.

7. None of the three Legislators had an understanding of the statutory ethical standards, or appeared to appreciate the inappropriateness of their actions.

8. The decision of the Real Estate Commission to bring this complaint to the attention of the Commission on Governmental Ethics and Election Practices was responsible and appropriate. The Real Estate Commission documented and presented information in its possession concerning these matters in a very thorough and capable manner.

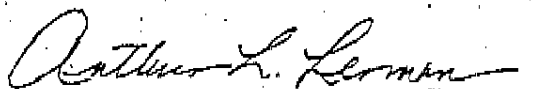
Recommendations and Conclusions

1. In an effort to avoid similar exercises of undue influence in the future, the Legislature should provide an educational forum in which Legislators would be informed and reminded of the statutory standards for legislative ethics, on an annual basis. The particulars of such a program are properly left to the Legislature itself.

2. The Commission concludes that the respective Houses of the Legislature should determine what disciplinary action, if any, is appropriate under the circumstances regarding Senator [REDACTED], Senator [REDACTED] and Representative [REDACTED].

Dated: October 14, 1988

COMMISSION ON GOVERNMENTAL
ETHICS AND ELECTION PRACTICES



ARTHUR L. LERMAN
Chairman

Members concurring:

Charles J. Sanders
Richard H. Pierce
Gregory G. Cyr
Paul W. Chaiken
David Benson