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ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

March 29, 1991

Honorable Jeffrey Mills
Senate Chair, Legal Affairs Committee
State House Station #3
Augusta, ME 04333

Dear Senator Mills:

On March 28, 1991, you asked for advice concerning whether you would be involved in any conflict of interest should you vote on Legislative Documents Nos. 194 and 867 dealing with the subject of requiring landlords to pay interest earned on security deposits paid by tenants. Your specific concern relates to the fact that you apparently own rental property and would be affected by these pieces of proposed legislation. You requested a response, if possible, prior to 9:00 a.m. on March 29, 1991. I am responding to you and providing you with my opinion in my capacity as counsel to the Commission on Governmental Ethics and Election Practices. For the reasons discussed below and in the accompanying Opinion of the Attorney General dated September 6, 1984, it is my opinion that those Legislators who are landlords and, therefore, might be affected by L.D.'s 194 and 867 do not have any conflict of interest which would require the Legislator to abstain from voting on either of those bills.

The relevant provision of the Legislative Ethics Law is 1 M.R.S.A. § 1014(1)(F) which provides that a conflict of interest shall include the following:

Where a Legislator or a member of his immediate family has an interest in legislation relating to a profession, trade, business or employment in which the Legislator or a member of his immediate family is engaged, where the benefit derived by the Legislator or member of his immediate family is unique and distinct from that of the general public or persons engaged in similar professions, trades, businesses or employment.

The key element of this conflict of interest provision is that which provides that the benefit derived by the Legislator or a member of his immediate family by legislation must be "unique and distinct from that of the general public or persons engaged in similar professions, trades, businesses or employment." While Legislators who are landlords may be affected by L.D. 194 and L.D. 867^{1/2}, the effect on Legislators who are landlords is not unique or distinct from that of persons who are not Legislators and who are landlords. In other words, if enacted, either of these bills will apply equally to all landlords in the State, not just those located in a particular area or with particular characteristics which are unique and distinct and which are shared by you or any other Legislator who may be a landlord. Because the bills apply equally to all landlords, the "benefit" derived from that legislation who are members of the Legislature is not "unique and distinct," and therefore, it is my opinion that there is no conflict of interest for a Legislator who is also a landlord which would require abstention from voting on either of those bills.

I hope this information is helpful to you, and please don't hesitate to contact me if I can be of further assistance to you.

Sincerely,



WILLIAM R. STOKES
Assistant Attorney General

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^{1/2}it is not even entirely clear that 1 M.R.S.A. § 1014(1)(F) is directly on point since it does not appear that a Legislator who is a landlord would actually derive a "benefit" from either of those bills. In any event, 1 M.R.S.A. § 1014(1)(F) appears to be the most relevant provision of the Legislative Ethics Law which applies to your question.