



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

March 16, 2015

Rep. Jeffrey K. Pierce
Maine House of Representatives
2 State House Station
Augusta, ME 04333

Dear Rep. Pierce,

Thank you for requesting advice from the staff of the Maine Ethics Commission concerning whether you may influence L.D. 800 in the 127th Legislature.

Factual background. The advice in this letter is based on the facts and circumstances that you described:

- You are a founder and the Executive Director of the Alewife Harvesters of Maine. This is an association of roughly one hundred people who are committed to conserving alewives in Maine and to preserving the harvesting of alewives. Some members of the association harvest alewives during the season of April to June. Others are private citizens who believe that alewives are important to the ecology of Maine and should be permitted upstream to spawn.
- The Alewife Harvesters of Maine is an all-volunteer organization. The Executive Director position is not paid.
- In 2013, you and two other members of the association's board of directors testified in support of L.D. 72 of the 126th Legislature. The purpose of the bill was to re-open the St. Croix River to alewives. The St. Croix River is a 71-mile long river that forms part of the border between Maine and New Brunswick, Canada. After the law became effective in 2013, a wooden barrier at the fishway at the Grand Falls Dam was removed, which allowed alewives access to the St. Croix River.
- At the time that you advocated in favor of L.D. 72, you were not serving in the Maine Legislature. You were elected for the first time in the November 4, 2014 general election.
- A bill (L.D. 800) has been introduced in the 127th Legislature that would reverse L.D. 72 and would block access of alewives to the St. Croix River.

- The presence of alewives on the St. Croix River has no financial impact on you. During April-June, you harvest alewives in Dresden, Maine, which is more than 150 miles away from the St. Croix River.
- Based on your knowledge of the alewife fishery, in your opinion the only economic impact of allowing the passage of alewives on the St. Croix River will be to the Passamaquoddy Tribe. According to information you have received from the Maine Department of Marine Resources, any economic benefit will not occur for at least 20 years.

Analysis by Commission Staff

The Maine Legislature has established standards for when a member must recuse himself or herself due to a conflict of interest. Based on these standards, the Commission staff sees no conflict of interest for you to vote on or otherwise influence L.D. 800.

The Legislative Ethics Law defines the term “conflict of interest” in 1 M.R.S.A. § 1014(1) to cover a number of situations which are set forth in paragraphs (1)(A) through (1)(F). If a member has a conflict of interest in connection with a bill or other legislative matter, it is a violation of legislative ethics for the Legislator to attempt to influence that bill or matter. (1 M.R.S.A. § 1014(1))

Legislators on Boards of Non-Profit Organizations

Paragraph 1(A) relates to situations in which the Legislator has a “close economic association” with an entity that is affected by proposed legislation. This could cover the Legislator’s employer, but also other organizations with which the Legislator is affiliated (*e.g.*, if a Legislator serves as a member of a non-profit organization’s board of directors, or passively owns more than 10% of a family business).

A. When a Legislator or a member of the Legislator’s immediate family has or acquires a direct substantial personal financial interest, distinct from that of the general public, in an enterprise that would be financially benefited by proposed legislation, or derives a direct substantial personal financial benefit from close economic association with a person known by the Legislator to have a direct financial interest in an enterprise affected by proposed legislation

In this case, § 1014(1)(A) does not appear to apply, because you do not derive “a direct substantial personal financial benefit” from your association with the Alewife Harvesters of Maine. It is an all-volunteer organization that does not compensate you for your work.

Moreover, the Commission has taken the view that voting on legislation results in a conflict of interest under § 1014(1)(A) only if the Legislator or immediate family member *personally benefits* from the legislation. In a March 12, 2010 advisory opinion to Rep. Jon Hinck, the

Commission endorsed the reasoning of a June 10, 1983 advisory opinion of Maine Attorney General James E. Tierney. In that opinion, a Legislator had inquired whether she was prevented from voting on a bill because her husband had rendered legal advice to a client concerning the bill. After reviewing the legislative history of 1 M.R.S.A. § 1014(1)(A), the Attorney General observed that

[I]t is clear that the Legislature never intended that a member of either House must be disqualified from voting on a proposal merely because she or a member of her immediate family is compensated for work performed for an employer or a client who might be affected by the legislation. The "direct substantial personal financial benefit" referred to in 1 M.R.S.A. §1014(1)(A) must involve a financial reward separate and distinct from the remuneration one receives as an employee or agent for services rendered.

For purposes of this advice letter, the Commission staff must rely on these opinions of the Commission and the Maine Attorney General. Under this reasoning, a conflict results only if the Legislator *personally* receives a benefit from the legislation. There is no evidence present that you will benefit from the presence of alewives in the St. Croix River. Accordingly, it would not be a conflict under § 1014(1)(A) for you to influence L.D. 800.

Recusal on bills relating to a Legislator's profession or trade

Paragraphs 1(E) and 1(F) of § 1014(1) define conflicts of interest arising out of a Legislator's employment, profession or trade:

E. When a Legislator or a member of the Legislator's immediate family accepts or engages in employment that could impair the Legislator's judgment, or when the Legislator knows that there is a substantial possibility that an opportunity for employment is being afforded the Legislator or a member of the Legislator's immediate family with intent to influence the performance of the Legislator's official duties, or when the Legislator or a member of his immediate family stands to derive a personal private gain or loss from employment, because of legislative action, distinct from the gain or losses of other employees or the general community; and

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

These two paragraphs contain a number of tests for determining whether a Legislator has a conflict of interest. In summary, a Legislator has a conflict of interest in influencing legislation

Hon. Jeffrey K. Pierce

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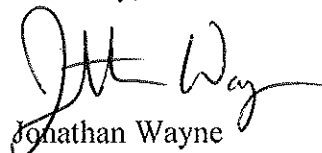
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related to his profession or trade, if (1) the legislation would result in a financial benefit to the Legislator, and (2) that benefit is unique or distinct from other individuals in the same trade or profession as the Legislator.

In this case, the presence of alewives on the St. Croix River has no apparent financial benefit to you whatsoever. Harvesting alewives is strictly regulated and you are only permitted to harvest the fish in Dresden, Maine which is more than 150 miles away from the St. Croix River. So, there does not appear to be any conflict of interest for you to influence L.D. 800.

This guidance by the Commission staff is based solely on the facts and circumstances that you have provided and that are set out above. If the facts change, the staff's advice may change, as well. This guidance is not binding on the Commissioners if a complaint were filed with the Commission concerning this matter. Thank you again.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Wayne". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Jonathan Wayne
Executive Director