

LEGISLATIVE ETHICS

One Hundred and
Twenty-Ninth Legislature

Janet T. Mills,
Attorney General



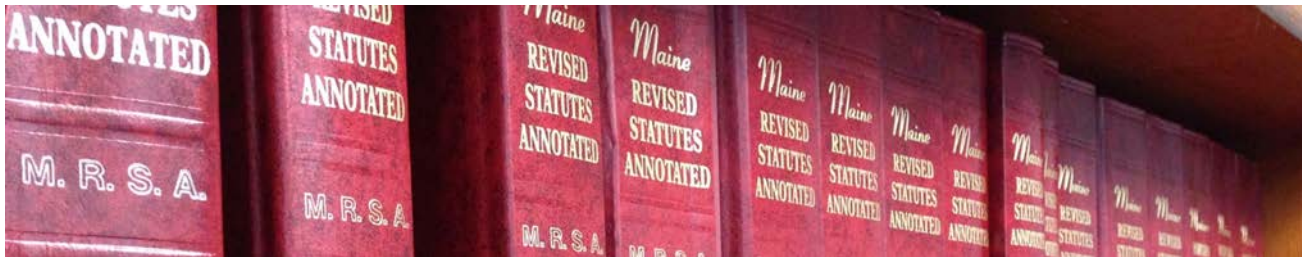
William A. Lee III, Esq.,
Chair, Ethics Commission



Overview

- Ethics Commission overview
- Top things not to do – the criminal offenses
- Detailed discussion
 - conflicts of interest
 - undue influence
 - state contracts
 - gifts
- Questions





“If public confidence in government is to be maintained and enhanced, it is not enough that public officers avoid acts of misconduct. They must also scrupulously avoid acts which may create an appearance of misconduct.”

1 MRSA § 1011

Who we are

Commission makeup:

Appointed by Governor; confirmed by Senate
2 Democrats, 2 Republicans, 1 Independent
3 year terms; limited to 2 terms

Current Commission:

William A. Lee, Chair

Richard A. Nass

Meri N. Lowry

Bradford A. Pattershall

When

- Generally monthly meetings
- Additional meetings during the election cycle years (28 days preceding election, 2 business days)



Commission Staff

Jonathan Wayne, Executive Director
Paul Lavin, Assistant Director
Phyllis Gardiner, Assistant Attorney General
and Commission Counsel

Emma Burke, Candidate Registrar
Ben Dyer, Political Committee and
Lobbyist Registrar

Erin Gordon, Candidate Registrar
Katie Feliciano, Commission Assistant



Jonathan Wayne

What we do

- Big name, narrow focus
- Not the ethics cop for all government
- Campaign finance
- Lobbyist registration
- Legislative ethics



FOLLOW THE MONEY

What we do

- Receive campaign finance reports from candidates, PACs, party committees, and ballot question committees
- Maine Clean Election Act program
- Lobbyist Disclosure – ensure openness and ID
- Administer and investigate violations of campaign finance and reporting requirements
- Submit legislation and engage in rulemaking
- Investigate and issue advisory opinions on violations of legislative ethics

What we don't do

- Weigh in on general governmental ethics issues
- Hear ethics complaints about anything other than legislative ethics



How to Avoid Appearing before Ethics Commission

- Probably half of our cases are for late campaign filings by candidates
- Many wait until the last minute to file
- If there is a problem then with filing, the filing will be late
- Do not expect sympathy if your last minute filing fails

The Solution

- File early enough, so that if there is a problem it can be remedied
- Read the Commission's guidance and online instructions
- Please ask your treasurer to do the same
- Contact the Ethics Commission staff with any questions
- If Commission staff requests you to do something by a certain date, do it

Receive Statements of Sources of Income

- Due February 15, 2019
- Legislators will receive the form when they return to the State House after January 1
- Legislators must state the sources of their income for calendar year 2018
- If substantial change, update in 30 days



Statements of Sources of Income

- **Income** (sources, not amounts)
 - employment and self-employment;
 - business entities (you or immediate family)
 - practice of law
 - any other sources (*e.g.*, interest, dividends, capital gains, rent, pensions, etc.)
 - gifts and honoraria
 - received by a spouse, domestic partner or dependent child

Statements of Sources of Income

- reportable liabilities (loans)
- If you or your immediate family:
 - conducted business with a State agency
 - represented someone for compensation before a State agency
 - held any position in any political committee or for-profit or nonprofit organization

Reporting Travel Costs

- Accepting payment for travel costs (air fare, hotel, meals) is a gift if the value is more than \$300 in a calendar year (single source)
- Legislators must disclose gifts in the Income Statement they file on the following February 15
- For more advice, please see tri-fold pamphlet or call the Commission staff
- More to come on whether a specific gift, regardless of value, is allowed under the law



Side notes on lobbying

- If a lobbyist or lobbyist's client spends \$25 dollars or more on your behalf or on behalf of a member of your immediate family, that expenditure and your name will show up in the lobbyist's monthly report

3 MRSA § 317(1)(G)

- You may not serve as a paid lobbyist for a period of one year after your term as a Legislator ends

1 MRSA § 1024

Disclosure of Bids

- If you or an associated organization bid on a contract with a state agency, you must file a statement with the Commission disclosing the bid the same day it is submitted
- An associated organization means you (or your spouse or dependent child)
 - are a managerial employee, officer, member of the board or
 - own or control 10% or more of the firm



Legislative Ethics – Advice and Complaints

- Legislators can ask for advice from Commission or staff
- All written advice is public
- Commission can receive complaints, but are very rare (1 MRSA §§ 1014, 1015)
- Only 5 complaints in 10 years



Criminal Offenses

- Bribery
- Improper influence
- Improper compensation for past action
- Improper gifts
- Improper compensation for services
- Purchase of public office
- Official oppression
- Misuse of information
- Misuse of equipment





Bribery

- People can't give you a pecuniary benefit with the intention of influencing your actions or vote
- People can't promise to give you something to vote a certain way
- You can't solicit it or take it if it is offered
- You have to report to a law enforcement officer if you are offered/promised a bribe

17-A MRSA § 602 Class C

“Pecuniary Benefit” defined for Bribery and Corrupt Practices

“Pecuniary benefit” means any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain.

The only exceptions are:

- (1) a meal, if provided as part of informational program to a group of legislators;
- (2) a meal, if part of a prayer breakfast; or
- (3) a subscription to a newspaper or other news publication.

17-A MRSA § 602(2)(C)

Improper Influence

- You can't be threatened with harm for the purpose of influencing your actions or vote
- You can't privately try to affect an administrative or judicial proceeding
- You have to report it if someone tries to improperly influence you
- "Harm" means any disadvantage or injury, pecuniary or otherwise, including disadvantage or injury to any other in whose welfare you are interested

17-A MRSA § 603 Class D

Improper Compensation for Services or Past Action

- You can't accept any pecuniary benefit in return for a past action or vote, or for other services as a legislator
- Illegal for people to offer it
- Fact that there isn't a payment doesn't make a difference
- Of course, you can accept your legislative pay and lawful reimbursements from the State of Maine for the work you do here!

17-A MRSA § 604 Class D

17-A MRSA § 606 Class E

Improper Gifts to Public Servants



Improper Gifts to Public Servants

- You can't solicit or accept any pecuniary benefit if the donor's purpose is to influence you in, or reward you for, your work
- The legal standard: if you know or reasonably should know the purpose of the donor is to influence or reward
- People can't offer you or promise you improper gift

17-A MRSA § 605 Class E

Cautionary tale on gifts:

- A gift to your spouse, domestic partner or dependent child by someone affected by a bill creates a conflict of interest if given to reward or influence your work as a legislator (*1 MRSA § 1014(1)(B)*)
- Don't accept any gift if there's even a slim chance that it was to try to influence your work



Purchase of Public Office

- You can't solicit or accept for yourself, another person, or a political party, money or other pecuniary benefit as compensation to endorse, approve, etc., or disapprove of someone for a position as a public servant or to advance any public servant
- You can't offer any such pecuniary benefit
- You can't sell your influence in getting someone a position in government

17-A MRSA § 607 Class D

Official Oppression

- You, while acting with the intention to benefit yourself or another or to harm another, cannot:
 - knowingly commit an unauthorized act which purports to be an act of your office, or
 - knowingly refrain from performing a duty imposed on you by law or clearly inherent in the nature of your office

17-A MRSA § 608 Class E

Misuse of Information

- You, knowing that official action is contemplated, or acting in reliance on information acquired by virtue of your office or from another public servant, can't use information to:
 - get or get rid of a pecuniary interest in any property, transaction or enterprise that may be affected by such official action or information; or
 - speculate or wager on the basis of such official action or information
- You can't knowingly aid another to do any of these things



17-A MRSA § 609 Class E

Misuse of Equipment, etc.

- You may not knowingly use the Legislative or other state agency computer system to:
 - prepare campaign material advocating for or against election of any candidate for a federal office, a constitutional office or elective municipal, county or state office, including leadership positions (the presiding officers of each House of the Legislature, party leaders, the Clerk of the House, the Assistant Clerk of the House, the Secretary of the Senate and the Assistant Secretary of the Senate), or
 - solicit campaign contributions

21-A MRSA § 32 (3) Class C

Misuse of Equipment, etc.

- Be careful what you ask your employees to do
- Legislative employees may not at anytime use the computer system, telephones, copying machines and other legislative equipment for work related to campaigns
- Partisan legislative employees who are active in campaigns must either limit those activities to evenings and weekends or take leave if those activities occur during the Legislature's regular business day (8 to 5)

Prohibitions under Legislative Ethics Law

LAW and EXAMPLES OVERVIEW

Conflict of interest

Undue influence

Abuse of office

State contracts

Conflict of interest: Financial Benefit

You may not vote on or attempt to influence a bill, if you, your spouse or dependent child either:

- **has a personal financial interest in an entity that would benefit financially from the bill, OR derives a personal financial benefit from a close economic association with a person you know has a direct financial interest in an enterprise affected by the bill; AND**
- **the financial interest is direct and substantial and distinct from that of general public.**

1 MRSA § 1014(1)(A)

WHAT IF:

A solid waste disposal company wants to develop a new landfill on property listed by your spouse, a real estate broker, AND

The opening of the new landfill requires legislation.

Can you vote on the bill or seek to influence others?

Conflict of Interest: Employment

You may not vote on or attempt to influence a bill if you, your spouse or dependent child accepts or engages in employment:

- that could impair your judgment as a legislator; OR**
- that you know is given, to a substantial possibility, with an intent to influence you as a legislator; OR**
- where you, your spouse or child stands to derive a personal and private gain or loss from the employment because of legislative action AND that gain/loss is distinct from that of other employees or gains/losses of the general community.**

1 MRSA § 1014(1)(E)

WHAT IF:

Your son is offered a job by the owner of an amusement company who stands to benefit financially if a bill before your committee receives favorable passage. The bill caps liability for damages arising from injury claims at amusement parks.

Should your son take the job? If he does, should you vote on the bill or try to influence the vote of others?

Conflict of Interest: Unique & Distinct Benefit

You may not vote on or attempt to influence a bill if you, your spouse or dependent child has an interest in legislation:

- **relating to your or their profession, trade, business or employment AND**
- **the benefit to be derived is EITHER**
 - **unique and distinct from that of general public OR**
 - **unique and distinct from that of persons engaged in similar professions, trades, businesses or employment.**

1 MRSA § 1014(1)(F)

WHAT IF:

You are a landlord and a bill proposes to increase the interest you must pay on tenant deposits?

Can you vote or try to influence the votes of others?

Other Conflicts of Interest

You may NOT receive compensation or reimbursement for expenses for your legislative service other than the salary and reimbursement that are specifically authorized by law and paid to you by the State.

1 MRSA § 1014(1)(C)

You may NOT appear for, represent or advocate on behalf of another person or entity before the Legislature UNLESS you do so without compensation and for the benefit of a citizen.

1 MRSA § 1014(1)(D)

UNDUE INFLUENCE

You may NOT appear for, represent or assist a person in a matter before a State Agency UNLESS:

- **you do so without compensation and for the benefit of a constituent; OR**
- **you are acting in your private capacity as an attorney or other professional AND you do NOT refer to your legislative capacity, communicate on legislative stationery OR make threats or implications regarding legislative action.**

*1 MRSA § 1014(2-A)(A)
(undue influence)*

WHAT IF:

A constituent is upset with the Warden Service because of what the constituent perceives as inconsistent enforcement of anti-poaching laws.

Can you intervene on your constituent's behalf by contacting the Colonel of the Warden Service or the IF&W Commissioner?

Administrative and Judicial Proceedings

You cannot privately communicate with an official in an administrative or judicial proceeding with the intention of influencing the official's discretion on the basis of considerations other than those authorized by law.

17-A MRSA § 603 (improper influence – Class D crime)

All communications with such officials should be on the record and in a manner permitted by the Administrative Procedures Act or rules of court procedure.

WHAT IF:

Your constituent is a licensed professional (e.g., physician, electrician, social worker) who asks for your help with a disciplinary hearing before the licensing board. The constituent tells you that he is being treated unfairly and asks that you intervene on his behalf.

Can you intervene by phoning board members? How about by appearing at the hearing?

State Contracts

You, your spouse, dependent child or “associated organization” may contract with a state agency ONLY IF:

(1) the contract has been awarded through a process of public notice and competitive bidding; OR

(2) the contract is exempt from competitive bidding under purchasing laws; OR

(3) payment under the contract is based on uniform rates established by a state agency or other governmental entity.

An “associated organization” is one in which you, your spouse or dependent child is a managerial employee, officer or director OR owns or controls at least 10% of the outstanding shares.

1 MRSA § 1014(3)(A)&(4)(abuse of office)

What other statutory prohibitions apply to your activities as a legislator?

You may not grant or obtain any special privilege, exemption or preferential treatment to or for yourself or another when that privilege, exemption or treatment is not readily available to members of the general community or class to which the beneficiary belongs.

1 MRSA § 1014(3)(B) (abuse of office)

You may not use or disclose confidential information obtained because you are a legislator for your benefit or the benefit of another.

1 MRSA § 1014(3)(C) (abuse of office)

What “pecuniary benefits” or “gifts” are you prohibited from accepting?

You may not solicit or accept a “pecuniary benefit” or “gift”:

- if you know, or reasonably should know, that the purpose of the donor is to influence your vote, influence you in the performance of your duties as a legislator, or reward you for some action you have taken; OR
- if the pecuniary benefit or gift is in return for a vote you have made, or for your advice or assistance in promoting a bill, or is given as compensation for your endorsement, nomination, approval or disapproval of any person for a public office.

17-A MRSA § 604; 605; 606; 607 (bribery, improper compensation, improper gifts); 1 MRSA § 1014(1)(B) (conflict of interest)

Other examples

- State Trooper pulls you over driving 90 MPH on I-95 headed to session (completely unlikely scenario!)
- Do you:
 1. Remind the trooper that you vote on the Public Safety budget?
 2. Tell the trooper that you are on your way to session and can't be stopped by law enforcement?

Maine Constitution, Art. IV, Part Third, §8
 3. Do nothing more than you would do if you weren't a legislator?

Other examples

- You get an email on your State email account from someone who wants to help your re-election campaign
- Do you:
 1. Email back what you need help with?
 2. Call the person from your State House phone?
 3. Email back your personal email address and/or suggest a time for you to call on your personal cell phone?

The End

