

2009

Report on Ethics Laws for Executive Branch Employees 2009

Maine Commission on Governmental Ethics and Election Practices

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Report on Ethics Laws for Executive Branch Employees



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Table of Contents

Part I	Summary and Introduction	1
Part II	Education and Enforcement of Executive Branch Ethics Laws ..	5
Part III	Existing Ethical Standards in Maine	8
	A. Criminal statutes	8
	B. Civil statutes	11
	C. Other authorities	20
Part IV	Recommendations	24
Appendix		

PART I. SUMMARY AND INTRODUCTION

This report is issued by the Maine Commission on Governmental Ethics and Election Practices in response to Resolve Chapter 88 of the Public Laws of 2009.

The resolve directs the Commission to

examine existing ethical standards that govern members of the executive branch and develop advisory recommendations regarding the establishment of statutory ethical standards for the executive branch and submit a report, including suggested legislation, to the Joint Standing Committee on Legal and Veterans Affairs no later than December 3, 2009. (see appendix)

The Commission on Governmental Ethics and Election Practices has no jurisdiction over executive branch ethics in Maine, other than receiving personal financial disclosure statements from major policy-influencing officials and other department managers. Maine is one of 11 states which do not have an independent agency that regulates the professional ethics of the executive branch of government, according to research by the National Conference of State Legislatures.

The Commission's only ethics jurisdiction pertains to Legislators. The Commission offers advice on selected ethics issues to Legislators and investigates complaints of ethical violations by Legislators if the complaints have merit and are within the Commission's limited jurisdiction (*i.e.*, conflicts of interest, undue influence on agencies, and abuse of office or position).

Under its existing mandate, 'ethics' constitutes only a small part of the Commission's responsibilities (as the term is used in most other states). In spite

of its name, the Commission is primarily a financial disclosure board for political campaigns and lobbying activities, not an ethics agency. The Commission's major duties are:

- serving as the campaign finance agency for the State of Maine by receiving and overseeing financial reporting by 500+ candidates, 125+ political action committees, dozens of party committees, and beginning in 2011, municipal candidates and political action committees in 13 towns and cities with a population of 15,000 or more,
- administering the Maine Clean Election Act, which involves monitoring \$3 - \$8 million in spending of public funds by political candidates each election year, and
- serving as the state's lobbyist disclosure agency by overseeing disclosure reports by hundreds of lobbyists and their clients.

The Commission has a permanent staff of seven employees, who are spread thin assisting and monitoring the many filers within the Commission's jurisdiction. In the past five years, it has been successful in professionalizing its performance and wishes to make more improvements. The Commission is willing to take on any mandate assigned by the Legislature, but is concerned that accepting an enforcement and education role in the area of executive branch ethics without a staffing increase would hamper future efforts to improve performance in its core mission.

State government in Maine (and northern New England generally) has a reputation for good government. Relative to other regions of the country, Maine experiences relatively few incidents of state, county, and municipal employees using their positions for self-enrichment. Many factors contribute to this success, but one factor is the personal ethics of the individuals employed by these public

bodies. Employees of the executive branch are expected to perform their responsibilities ethically, and anecdotal evidence suggests that they do so overwhelmingly.

Nevertheless, it would be naïve to assume that instances of unethical conduct by state employees never occur. Even in a good-government state such as Maine, ethics statutes and policies have an important role in

- educating new employees about ethically difficult situations that could arise during the course of their employment,
- providing specific guidance to an employee or his or her supervisor who is unsure whether a proposed course of action is permissible, and
- constituting the basis for discipline in those instances where employees violate standards.

Therefore, it is important for the executive and legislative branches to periodically review current statutes and policies to confirm that they are adequate. The Commission hopes that this report will be helpful to the Legislature by gathering in one publication the existing ethical standards affecting the executive branch to assist Legislators in deciding whether changes to existing statutes are needed.

As described in Part III of the report, ethical standards governing executive branch employees in Maine are distributed among several types of legal and personnel authorities: criminal laws, civil statutes of general applicability, agency-specific laws, and non-statutory sources such as a statewide executive order, agency codes of ethics and conduct, personnel guidelines, state contracting

provisions, and labor agreements. Collectively, these sources appear to cover many of the ethics issues that can arise in contemporary state government:

- conflicts of interest,
- using state equipment (e.g., computers, vehicles) for personal benefit,
- taking unauthorized actions as a public official to benefit oneself or another,
- making a contracting decision that benefits a family member or business associate,
- accepting outside employment that is incompatible with public duties,
- being offered something of value to influence a governmental decision, and
- using one's office for political activities.

In Part IV of this report, the Commission recommends improving educational materials for executive branch employees, including

- posting electronic materials on the websites of the Bureau of Human Resources (BHR) or Department of Administrative and Financial Services (DAFS) with hyperlinks to the relevant legal and personnel authorities,
- introduction of ethics issues in the training of new state employees and agency managers, and
- periodic updates and reminders about the availability of resources on ethics laws.

PART II – EDUCATION AND ENFORCEMENT OF EXECUTIVE BRANCH ETHICS LAWS

Independent Ethics Agencies in Other States

Many states have established independent ethics agencies to investigate and punish ethical misconduct by employees in the executive branch of government. Some of these agencies also have jurisdiction over county and municipal employees as well. Typically, the issues covered by these agencies include conflicts of interest, gifts to governmental employees, improper use of office or equipment for personal benefit, or use of state property for political activities.

In addition to enforcement, some of these agencies also serve an important educational function. Some publish educational materials for public employees on ethics issues, answer day-to-day questions from executive branch employees about proposed activities, or conduct trainings of employees if resources permit.

According to research posted on the website of the Center for Ethics in Government of the National Conference of State Legislatures, 39 of 50 states (78%) have an independent board or commission with jurisdiction over ethics of executive branch employees. Eleven states (approximately one-quarter) lack an independent executive branch ethics agency. These states are Wyoming, Vermont, North Dakota, South Dakota, New Hampshire, Maine, Idaho, New Mexico, Utah, Arizona, and Virginia. Except for Arizona and Virginia, these states have relatively small populations (*i.e.*, in the lower third by population).

Education and Enforcement in Maine

In Maine, there is no separate board or commission that investigates misconduct by executive branch employees or offers guidance to executive branch employees on ethics issues. In Maine's executive branch, enforcement of ethical standards is conducted by the managers and the personnel officers in the various agencies with assistance provided by the Bureau of Human Resources (BHR), which is guided by legal advice from the Attorney General's Office. Employees who violate ethical rules are subject to discipline by the agencies. For employees who are covered by a collective bargaining agreement, the agency's investigations of misconduct must comply with the agreement.

In 2003, each state agency was required by statute to establish a policy "that makes certain that complaints filed by the public against a state employee or group of state employees are addressed by that agency." (5 M.R.S.A.

§ 7036(28)) The policies must:

ensure that there are written instructions describing the most effective way for the public to file a complaint with the agency, a procedure for the agency to address complaints from the public and a provision that requires the agency to notify a complainant of the outcome of the complaint.

In preparing this report, the Commission staff sought input from BHR concerning whether the establishment of an independent ethics agency could improve efforts to educate executive branch employees regarding ethical standards. The Director of BHR expressed concerns that if an independent agency were to offer

trainings to executive branch employees or to answer questions on specific inquiries,

- those educational activities could complicate lines of communication between agencies and their employees by sending mixed messages to employees about how ethical standards should be applied in specific situations, and
- it is possible that employees in agency disciplinary proceedings could even attempt to defend their own activities by pointing to past practices within the agency that were tolerated because of advice by the independent ethics agency.

The Legislature may wish to address these concerns in any future consideration of establishing an independent ethics agency.

PART III – EXISTING ETHICAL STANDARDS IN MAINE STATUTE AND POLICY

Criminal Statutes

Some of the most important restrictions in Maine law against unethical activity by state employees are contained in Chapter 25 of the Maine Criminal Code. As with all criminal statutes, these are generally enforceable by the Attorney General's Office and the county District Attorneys. The following section summarizes the statutes and is not intended as a legal analysis. All statutes referred to in this part of the report are included in the appendix.

Bribery and Improper Gifts

Maine's Criminal Code contains two statutes prohibiting a "public servant" from soliciting or accepting "any pecuniary benefit" from another person knowing that the other's purpose is to influence the public servant's performance of their duties. The two offenses are entitled "bribery in official and political matters" (17-A M.R.S.A. § 602(1)) and "improper gifts to public servants." (17-A M.R.S.A. § 605) While the two statutes overlap to some degree, in terms of the potential punishment, bribery is the more serious crime (Class C). Improper gifts is a Class E crime.

The term 'public servant' is not defined in either statute and presumably covers executive branch employees and officials in other departments of state government (e.g., constitutional offices). "Pecuniary benefit" is defined broadly,

and although it contains certain exceptions (e.g., meals provided as part of an informational seminar, 17-A M.R.S.A. § 602(2)(C)), it does not contain any minimum dollar value threshold.

In addition to the prohibition against the *acceptance* of a pecuniary benefit, both statutes prohibit promising, offering, or giving a pecuniary benefit to a public servant for the purpose of influencing their official actions. The bribery statute extends beyond influencing public servants and also covers providing something of value to a voter or a party official to influence their actions.

The bribery statute imposes an affirmative duty on the public servant to report to “a law enforcement officer” if he or she has been offered or promised a pecuniary benefit by someone with the intention of influencing his or her actions. (17-A M.R.S.A. § 602(1)(B))

Improper Compensation for Past Action and Improper Compensation for Services

Two other criminal statutes forbid misconduct similar to bribery and improper gifts. Improper compensation for past action forbids a public servant from soliciting, accepting, or agreeing to accept any pecuniary benefit “in return for having given a decision, opinion, recommendation, vote, otherwise exercised his discretion, or for having violated his duty.” (17-A M.R.S.A. § 604(1)(A)) (emphasis added in quotation) The offense of improper compensation for services forbids a public servant from accepting a pecuniary benefit “in return for

advice or other assistance in preparing or promoting a bill, contract, claim or other transaction or proposal as to which he knows that he has or is likely to have an official discretion to exercise” (17-A M.R.S.A. § 606)

Official Oppression (Abuse of Position)

The Criminal Code prohibits a public servant from

- “knowingly commit[ting] an unauthorized act which purports to be an act of his office” or “knowingly refrain[ing] from performing a duty imposed on him by law or clearly inherent in the nature of his office”
- “with the intention to benefit himself or another or to harm another”

(17-A M.R.S.A. § 608) Official oppression is a Class E crime.

Misuse of Information

The offense of misuse of information prohibits a public servant from “acting in reliance on information which he has acquired by virtue of his office or from another public servant,” and

- acquiring a pecuniary interest in any property, transaction or enterprise which may be affected by such official action or information, or
- speculating or wagering on the basis of such information.

(17-A M.R.S.A. § 609)

Conflicts of interest in contracts

Under 17 M.R.S.A. § 3104, a “trustee, superintendent, treasurer or other person holding a place of trust in any state office” may not have a pecuniary interest in any contract made on behalf of the institution in which he holds the place of trust. In addition, a civil law (5 M.R.S.A. § 18-A) described below governs conflicts of interest in agency contracts.

Civil statutes

Various sections of Title 5 of the Maine Revised Statutes impose ethical standards on executive branch employees in a number of areas:

Section 18(2)	conflict of interest in proceedings
Section 18(2-A)	participation in the legislative process
Section 18(3)	restrictions on former employees (revolving door)
Section 18(7)	avoiding an appearance of a conflict
Section 18(8)	duty to disclose a conflict of interest to one’s supervisor
Section 18-A	conflicts of interest in contracts
Section 19	statements of sources of personal income
Section 20-A	taking state property off-premises for personal use
Section 7051(3)	hiring relatives
Section 7056-A	political activities

Conflicts of interest in “proceedings” (5 M.R.S.A. § 18(2))

The different subsections of 5 M.R.S.A. § 18 prohibit “executive employees” (a defined term, as explained below) from engaging in certain activities.

Subsections 7 and 8 use the phrase “conflict of interest,” but the term is not defined. Presumably, the activities forbidden by subsections 2, 2-A, and 3 are intended to constitute a conflict of interest, although they are not referred to as such.

Subsection 18(2) prohibits an executive employee from participating in “a proceeding” if certain individuals or organizations related to the employee have a direct and substantial financial interest in the proceeding. Under this subsection, “[a]n executive employee commits a civil violation if he personally and substantially participates in his official capacity in any proceeding in which, to his knowledge, any of the following have a direct and substantial financial interest:

- A. Himself, his spouse or his dependent children;
- B. His partners;
- C. A person or organization with whom he is negotiating or has agreed to an arrangement concerning prospective employment;
- D. An organization in which he has a direct and substantial financial interest;
or
- E. Any person with whom the executive employee has been associated as a partner or a fellow shareholder in a professional service corporation pursuant to Title 13, chapter 22-A, during the preceding year.”

The term ‘proceeding’ is defined broadly to include

“Proceeding” means a proceeding, application, request, ruling, determination, award, contract, claim, controversy, charge,

accusation, arrest or other matter relating to governmental action or inaction.

“Executive employee” is also a defined term. The definition is long, but as indicated by the underlined phrase below, it applies to employees at every level of the executive branch:

- B. "Executive employee" means the constitutional officers, the State Auditor, members of the state boards and commissions as defined in chapter 379 and compensated members of the classified or unclassified service employed by the Executive Branch, but it shall not include:
- (1) The Governor;
 - (2) Employees of and members serving with the National Guard;
 - (3) Employees of the University of Maine System, the Maine Maritime Academy and state community colleges;
 - (4) Employees who are employees solely by their appointment to an advisory body;
 - (5) Members of boards listed in chapter 379, who are required by law to represent a specific interest, except as otherwise provided by law; and
 - (6) Members of advisory boards as listed in chapter 379.

Participation in the legislative process (5 M.R.S.A. § 18(2-A))

Under subsection 2-A, executive employees are also prohibited from participating in the legislative process if family members and other affiliated people and organizations have a “direct and substantial financial interest” in the legislation:

An executive employee commits a civil violation if the employee participates in the legislative process in the employee's official capacity concerning any legislation in which any person described

in subsection 2, paragraphs A to E has any direct and substantial financial interest unless the employee discloses that interest at the time of the employee's participation.

Revolving Door (former governmental employees) (5 M.R.S.A. § 18(3))

Generally, the term 'revolving door' in governmental ethics laws refers to restrictions against a former governmental officer or employee who has worked on a specific matter as a public servant later using their understanding of the matter for personal gain in subsequent private employment.

Maine's revolving door restriction is contained in Section 18(3). It covers proceedings in which the specific issue

- was pending before the executive employee's agency and
- was directly within the responsibilities of the executive employee.

Under Section 18(3), the executive employee may not knowingly act as an attorney for – or appear personally before an agency for – anyone other than the state in such a proceeding. The time period for the prohibition varies, depending on when the issue was pending before the agency:

- If the issue was pending before the agency within the last 12 months of the individual's employment at the agency, the individual may not participate in the proceeding permanently.
- If the issue was pending prior to the last 12 months of the individual's employment at the agency, the prohibition is for a one year period after the individual's termination of employment.

Avoiding an appearance of conflict of interest (5 M.R.S.A. § 18(7))
Disclosing a conflict of interest (5 M.R.S.A. § 18(8))

Subsection 7 directs executive employees to avoid the appearance of a conflict of interest “by disclosure or abstention”:

Every executive employee shall endeavor to avoid the appearance of a conflict of interest by disclosure or by abstention. For the purposes of this subsection and subsection 8, "conflict of interest" includes receiving remuneration, other than reimbursement for reasonable travel expenses, for performing functions that a reasonable person would expect to perform as part of that person's official responsibility as an executive employee.

Subsection 8 describes the duty to disclose a conflict of interest:

An executive employee shall disclose immediately to that employee's direct supervisor any conflict of interest within the meaning of this section.

Reading these subsections together, the statute may be understood to mean:

- if a current employee is considering a course of action that would be forbidden by subsection 2, 2-A, or 3, the employee is required to both cease participating in the public matter and also to disclose the conflict to one's supervisor, and
- if a situation presents an appearance of a conflict but does not require disqualification under subsection 2, 2-A, or 3, the appearance issue may be resolved through disclosure of the issue to the employee's supervisor.

Conflict of interest in contracts (5 M.R.S.A. § 18-A)

As noted above, executive employees may not “personally and substantially” participate in any proceeding (including the award of a contract) if certain individuals or organizations related to the employee have “a direct and substantial financial interest” in the proceeding. (5 M.R.S.A. § 18(2))) In addition, with respect to contracts in particular, certain higher-level executive

employees of an agency may not have “any direct or indirect pecuniary interest in” or receive “any benefit that may arise from” a contract made by the State when the employee’s agency is a party to the contract. (5 M.R.S.A. § 18-A) This civil prohibition is in addition to the criminal offense in 17 M.R.S.A. § 3104 described above.

Statements of sources of personal income (5 M.R.S.A. § 19)

High-level employees in the executive branch and the offices of the constitutional officers are required to file annual statements of the sources of their personal income. The reports are generally filed each April, except for the constitutional officers and the State Auditor who file the statements within 30 days of their election. The statements require the officials to disclose the sources of certain types of income such as employment by others, self-employment, gifts, and honoraria. The officials do not disclose the amounts of the income. (See form in appendix.) In 2008, the Legislature transferred the duty of receiving this executive branch disclosure from the Secretary of State’s Office to the Ethics Commission. Historically, the Commission has received similar disclosure statements from Legislators. Beginning in 2010, Legislators and executive branch officials will disclose in these statements any offices, directorships, or positions held by the officials in for-profit or non-profit organizations.

Taking state property off premises for personal use (5 M.R.S.A. § 20-A)

Under Subsection 1 of 5 M.R.S.A. § 20-A, an employee “may not take state property off the premises of the state for personal use or for the use of others without prior written approval of the head of the department for which that employee works.”

Hiring or promoting a relative (5 M.R.S.A. § 7051(3))

Under the state’s civil service laws, the final decision of whether a person will be hired or promoted by the State “may not be made in part or wholly by a person related to the job candidate by consanguinity or affinity within the 4th degree.”

The BHR Policy and Practices Manual (Section 6.3 Nepotism) also refers to this restriction. BHR recommends, in addition, that relatives of a candidate who is being considered for employment or promotion should not take any role whatsoever in the selection process. The BHR manual notes, however, that there is no provision in statute, rule, or policy that restricts one employee from supervising a family member, as long as the supervisory relationship is guided by sound management practice.

Political activities (5 M.R.S.A. § 7056-A)

Maine Law contains restrictions against executive branch employees using their positions and equipment for certain political activities. (5 M.R.S.A. § 7056-A)

This statute is the Maine analogue to the federal Hatch Act of 1939. The statute

applies to “an officer or employee in the classified service or an employee from the executive branch in the unclassified service of the state.”

Running for partisan office. Covered employees (except for National Guard members) may not be a candidate for elective office in a partisan public election other than for a local office. (§ 7056-A(4)) Being a candidate in a non-partisan election is permitted.

Political contributions. Executive employees are restricted from making contributions in certain circumstances. The restrictions seem to be designed to avoid interference with the employee’s performance of his or her public duties. Otherwise, the employees are free to contribute money to candidates and to political organizations. The statute prohibits the employee from:

- giving a contribution to the employee’s superior, or handing over a contribution to the superior,
- accepting a contribution from a subordinate,
- soliciting or accepting a contribution from someone who is regulated by the agency or who contracts with the agency, or making a contribution to such individuals or organizations, and
- giving a political contribution to another to influence that person’s vote, and receiving a contribution to influence the employee’s vote.

(§ 7056-A(2))

Using state facilities or resources. Covered employees and officers may not engage in “political activity”

- A. when the employee is on duty;
- B. in state-owned or leased work space occupied in the discharge of official duties or by using the facilities or services of the State; or
- C. when wearing a uniform or official insignia identifying the office or position of the employee or while using a vehicle owned or leased by the State or its agencies.

Political activity is defined as expressly advocating for a candidate, or soliciting contributions for a candidate, political action committee, or party committee.

(§ 7056-A(3))

Using officer's authority. A covered official and employee may not use the "officer's or employee's official authority, influence or supervisory position for the purpose of:

- A. interfering with or affecting the result of a partisan election or nomination for elective office; or
- B. attempting to intimidate, threaten, coerce, command or influence a person to give or withhold a political contribution or to engage or not to engage in any form of political activity as defined in this section."

(§ 7056-A(1))

Agency-Specific Statutes Concerning Conflicts of Interest

In addition to the conflict of interest provisions in Title 5 described above, many departments of the state government have agency-specific statutes which describe a conflict of interest in the context of the particular duties of the agency.

For example:

- Certain substantial changes to health care facilities require that the Department of Health and Human Services issue a "certificate of need."

An employee of the department cannot participate in the decision to grant a certificate if the employee “has a substantial economic or fiduciary interest that would be affected by a recommendation or decision to issue or deny a certificate of need” or “who has a close relative or economic associate whose interest would be so affected.” (22 M.R.S.A. § 344)

- An employee of the Maine State Housing Authority may not participate “in any decision on any contract or project entered into by the Maine State Housing Authority if that employee or commissioner has any interest, direct or indirect, in any firm, corporation, partnership, or association which may be party to the contract or financially interested in any such project.” (30-A M.R.S.A. § 4724)

Other Authorities

1989 Executive Order

On April 1, 1989, Governor John R. McKernan, Jr. issued Executive Order 10 FY88/89 establishing a Code of Ethics and Conduct for Maine state government. Most sections of the code could be characterized as aspirational in that they call on employees to strive for a high level of service, effectiveness, personal integrity, and respect for colleagues. A copy of the order, which remains in effect, is included in the appendix.

Agency Codes of Ethics

In August 2006, Governor John Baldacci directed DAFS Commissioner Rebecca Wyke to prepare legislation that would require each component of state government to develop its own code of ethics and conduct. During the 2007 session, the legislation was enacted as P.L. 2007, Chapter 107. The law requires agencies to develop an ethics code “to guide the operations and financial administration of each particular entity.” (5 M.R.S.A. § 1547(8)) The

State Controller may ensure that agencies have complied with their code as it applies to financial administration.

Agency Policies on Information Technology

State agencies are required to adopt a policy concerning use of state-owned technology equipment (e.g., computers, e-mail, telephones, voicemail, and fax machines). The policy prohibits employees from using state-owned equipment for inappropriate or unprofessional materials. Also, employees are advised that any personal use of state-owned equipment and resources must be incidental in nature. The Commission's internal policy, which is essentially the state's model policy, is in the appendix.

Outside Employment

Some states have statutes which prohibit state employees from holding another job that is inconsistent with the employee's public duties. Maine does not have a similar state-wide statute.

Bargaining Agreements

However, bargaining agreements between the State of Maine and the Maine State Employees Association contain an article forbidding employees from outside employment which would constitute a conflict of interest with their state positions:

ARTICLE 46. OUTSIDE EMPLOYMENT

Employees may engage in other employment outside of their State working hours so long as the outside employment does not involve a conflict of interest with their State employment. Whenever it appears that any such outside employment might constitute a conflict of interest, the employee is expected to consult with his/her appointing authority or other appropriate agency representative prior to engaging in such outside employment. Employees of agencies where there are established procedures concerning outside employment for the purpose of insuring compliance with specific statutory restrictions on outside employment are expected to comply with such procedures. (2007-09 Professional and Technical Services Bargaining Unit Contract, page 44)

The term conflict of interest is not defined in the bargaining agreement, but it puts the employee on notice that he or she should check with the agency about restrictions on outside employment.

Provisions in State Contracts with Vendors

When state departments contract with outside vendors to receive services, the contracting process is governed by procedures of the Division of Purchases. Under those procedures, contracts must include standard language (boilerplate) to protect the interests of the state. Rider B, paragraph 11 imposes restrictions on the freedom of a vendor to hire current or former state employees.

Under this contractual language, the vendor may “not engage any person in the employ of any State Department or agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104 [conflict of interest].” In addition, the vendor must receive written consent of the State Purchases Review

Committee before hiring any other state employee during the time period covered by the contract, even if the proposed employee does not create a conflict of interest under the statutes.

PART IV. RECOMMENDATIONS

Because the Ethics Commission currently does not have jurisdiction over ethical issues in the executive branch, it is not well positioned to know about individual instances of ethical misconduct or systemic problems that could be remedied by statutory changes. At their July 30, 2009 meeting, the members of the Ethics Commission expressed the view that decisions on statutory improvements would best be made by the Legislature based upon its current oversight of the departments of state government. The Legislature's Office of Program Evaluation and Governmental Accountability (OPEGA) may be a helpful resource for the Legislature in determining the scope of any problem, because of the audits and reports on agency performance conducted by OPEGA since 2005. In addition, the Attorney General's Office often fields questions and requests for advice regarding the applicability of the laws summarized in this report.

A. Better educational resources for executive branch employees

The Commission recommends that the Legislature encourage the executive branch to take some straightforward steps to make executive branch employees more aware of existing ethics statutes and policies. Easier access to these authorities could only help promote ethical conduct and strengthen the grounds for discipline when an employee's activities fall short. The Commission believes that the following actions by the executive branch would be feasible, even during this period of reduced state resources.

- The Bureau of Human Resources (BHR) or other subdivision of the Department of Administrative and Financial Services (DAFS) should establish an ethics section on its website for state employees. The website should be viewable to the public and there should also be hyperlinks to this section from the “Intranet” that is currently available to state employees.

The Commission recommends that the website contain *plain language* explanations of the applicable statutes and policies, along with hyperlinks to the statutes and policies. The website should also encourage executive branch employees to seek guidance on ethics issues from the appropriate human relations manager within the agency or BHR.

- Another option is for BHR or DAFS to create an on-line ethics training consisting of slides covering different topics (gifts, conflicts of interest, etc.), similar to a power-point presentation. The Texas Ethics Commission has created a simple, easy-to-follow online ethics training slideshow for executive branch employees and legislative branch employees (www.ethics.state.tx.us/main/training.htm). The training consists of about 45 slides, and the Commission’s website advises that it takes 30 minutes to read. The training could be posted on the BHR or DAFS website as a reference tool for employees who have a question, or it could be available

as a training resource if particular agencies wish their new employees to take the training.

- When new executive branch employees are hired, they typically receive one-day training in the employment policies of the state from BHR or DAFS. In the experience of the Commission staff, a large number of topics are covered in these trainings. It would be understandably difficult to add in-depth guidance about a new topic such as ethics statutes and policies. Accordingly, the Commission recommends that BHR or DAFS introduce a two-page flyer in the written materials received by all new executive branch employees that will provide them with a brief overview of ethics issues and notice of the electronic resources that are available on the BHR or DAFS website.
- Agency managers have an important role in encouraging ethical behavior, answering questions about ethics issues, and in disciplining employees when problems arise. When managerial employees are hired, they undergo more thorough training that includes topics such as progressive discipline. The Commission recommends that BHR or DAFS include written materials on ethics issues in the training materials.
- Finally, the Commission recommends that BHR or DAFS send an annual or biennial communication to executive branch employees reminding them

of the availability of information on ethics issues on the BHR or DAFS website. An electronic newsletter circulated by e-mail could be a useful format, because it could contain hyperlinks to the topics on the BHR or DAFS website.

B. Centralization of existing ethics statutes

One difference between ethics statutes in Maine and in other states is that Maine does not have a single, consolidated code that governs the ethics of executive branch employees.¹ Rather, as described in Part III of this report, the restrictions are in the Criminal Code, Title 5, and other non-statutory authorities. The Commission suggests that the Legislature consider centralizing existing statutes in an ethics code that would provide guidance for executive branch employees in a single location in statute.

C. Gift law

Some states have a civil “gift law” (*i.e.*, separate from laws defining bribery or improper gifts as a crime), that prohibits public officials from accepting something of value from someone intending to influence the official in the performance of their duties. It is not unusual for the staff of the Maine Ethics Commission to receive telephone calls from out-of-state attorneys or consultants who are trying to confirm whether Maine has a similar civil statute. The Commission has no view as to whether the absence of a civil “gift law” in Maine statute is a deficiency, and is not

¹ *E.g.*, the Connecticut Code of Ethics for Public Officials in Chapter 10 of the Connecticut General Statutes, or Ethics in Public Service, Chapter 42.52 of the Revised Code of Washington.

making a recommendation in this area. Nevertheless, this is a difference between Maine's ethics laws and the laws of some other states.

If the Legislature is interested in considering enacting a gift law, one informational resource is the "50-State Table of Gift Laws" compiled by the Center for Ethics in Government of the National Conference of State Legislatures (www.ncsl.org/default.aspx?tabid=15316). Although the table relates to restrictions on gifts to legislators, many of the statutes are worded generally to apply to public servants in the different branches of state governments. It provides a good overview of the different classes of donors that are under restrictions in the various states (e.g., lobbyists, contractors) and the exceptions to those restrictions.

Thank you for your consideration of this report.

Appendix

PLEASE NOTE: The Office of the Revisor of Statutes **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Resolve

124th Legislature

First Regular Session

Chapter 88

S.P. 361 - L.D. 978

Resolve, Directing the Commission on Governmental Ethics and Election Practices To Develop Recommendations for Ethical Standards for the Executive Branch

Sec. 1 Commission to develop recommendations on ethical standards for the executive branch. Resolved: That the Commission on Governmental Ethics and Election Practices shall examine existing ethical standards that govern members of the executive branch and develop advisory recommendations regarding the establishment of statutory ethical standards for the executive branch and submit a report, including suggested legislation, to the Joint Standing Committee on Legal and Veterans Affairs no later than December 3, 2009. The commission shall seek input from members of the executive branch in developing these standards. The Joint Standing Committee on Legal and Veterans Affairs is authorized to report out legislation based on this report to the Second Regular Session of the 124th Legislature.

5 MRSA § 7036. DUTIES OF THE DIRECTOR

The Director of Human Resources shall be responsible for the administration of this chapter. In carrying out these duties and responsibilities, the director shall: . . .

28. Ensure establishment of policies regarding complaints against state employees. Ensure that each state agency establishes a policy that makes certain that complaints filed by the public against a state employee or group of state employees are addressed by that agency. Each agency policy must ensure that there are written instructions describing the most effective way for the public to file a complaint with the agency, a procedure for the agency to address complaints from the public and a provision that requires the agency to notify a complainant of the outcome of the complaint. This subsection does not authorize the release of confidential information that may not otherwise be released to the public.

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Maine Revised Statute Title 17-A, Chapter 25: BRIBERY AND CORRUPT PRACTICES

Table of Contents

Part 2. SUBSTANTIVE OFFENSES

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Section 601. SCOPE OF CHAPTER 2

Section 602. BRIBERY IN OFFICIAL AND POLITICAL MATTERS..... 2

Section 603. IMPROPER INFLUENCE 3

Section 604. IMPROPER COMPENSATION FOR PAST ACTION 3

Section 605. IMPROPER GIFTS TO PUBLIC SERVANTS 4

Section 606. IMPROPER COMPENSATION FOR SERVICES 4

Section 607. PURCHASE OF PUBLIC OFFICE 4

Section 608. OFFICIAL OPPRESSION 5

Section 609. MISUSE OF INFORMATION 5

17-A §601. SCOPE OF CHAPTER

Nothing in this chapter shall be construed to prohibit the giving or receiving of campaign contributions made for the purpose of defraying the costs of a political campaign. No person shall be convicted of an offense solely on the evidence that a campaign contribution was made, and that an appointment or nomination was subsequently made by the person to whose campaign or political party the contribution was made. [1975, c. 499, §1 (NEW) .]

SECTION HISTORY

1975, c. 499, §1 (NEW) .

17-A §602. BRIBERY IN OFFICIAL AND POLITICAL MATTERS

1. A person is guilty of bribery in official and political matters if:

A. He promises, offers, or gives any pecuniary benefit to another with the intention of influencing the other's action, decision, opinion, recommendation, vote, nomination or other exercise of discretion as a public servant, party official or voter; [1981, c. 349, §1 (AMD) .]

B. Being a public servant, party official, candidate for electoral office or voter, he solicits, accepts or agrees to accept any pecuniary benefit from another knowing or believing the other's purpose to be as described in paragraph A, or fails to report to a law enforcement officer that he has been offered or promised a pecuniary benefit in violation of paragraph A; or [1983, c. 583, §8 (AMD) .]

C. That person promises, offers or gives any pecuniary benefit to another with the intention of obtaining the other's signature on an absentee ballot under Title 21-A, chapter 9, subchapter IV, or referendum petition under Title 21-A, chapter 11, or that person solicits, accepts or agrees to accept any pecuniary benefit from another knowing or believing the other's purpose is to obtain that person's signature on an absentee ballot or referendum petition, or fails to report to a law enforcement officer that the person has been offered or promised a pecuniary benefit in violation of this paragraph. [1989, c. 502, Pt. A, §47 (AMD) .]

[1989, c. 502, Pt. A, §47 (AMD) .]

2. As used in this section and other sections of this chapter, the following definitions apply.

A. A person is a "candidate for electoral office" upon his public announcement of his candidacy. [1975, c. 499, §1 (NEW) .]

B. "Party official" means any person holding any post in a political party whether by election, appointment or otherwise. [1975, c. 499, §1 (NEW) .]

C. "Pecuniary benefit" means any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain; it does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally. "Pecuniary benefit" does not include the following:

(1) A meal, if the meal is provided by industry or special interest organizations as part of an informational program presented to a group of public servants;

(2) A meal, if the meal is a prayer breakfast or a meal served during a meeting to establish a prayer breakfast; or

(3) A subscription to a newspaper, news magazine or other news publication. [1997, c. 1, §12 (COR) .]

[1997, c. 1, §12 (COR) .]

3. Bribery in official and political matters is a Class C crime.

[2001, c. 471, Pt. A, §22 (AMD) .]

SECTION HISTORY

1975, c. 499, §1 (NEW). 1981, c. 349, §§1,2 (AMD). 1983, c. 583, §8 (AMD). 1989, c. 502, §A47 (AMD). 1993, c. 396, §1 (AMD). 1995, c. 33, §3 (AMD). 1997, c. 223, §1 (AMD). RR 1997, c. 1, §12 (COR). 2001, c. 471, §A22 (AMD).

17-A §603. IMPROPER INFLUENCE

1. A person is guilty of improper influence if he:

A. Threatens any harm to a public servant, party official or voter with the purpose of influencing his action, decision, opinion, recommendation, nomination, vote or other exercise of discretion; [1975, c. 499, §1 (NEW) .]

B. Privately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, argument or other communication with the intention of influencing that discretion on the basis of considerations other than those authorized by law; or [1975, c. 499, §1 (NEW) .]

C. Being a public servant or party official, fails to report to a law enforcement officer conduct designed to influence him in violation of paragraphs A or B. [1975, c. 499, §1 (NEW) .]

2. "Harm" means any disadvantage or injury, pecuniary or otherwise, including disadvantage or injury to any other person or entity in whose welfare the public servant, party official or voter is interested.

[1975, c. 499, §1 (NEW) .]

3. Improper influence is a Class D crime.

[1975, c. 499, §1 (NEW) .]

SECTION HISTORY

1975, c. 499, §1 (NEW) .

17-A §604. IMPROPER COMPENSATION FOR PAST ACTION

1. A person is guilty of improper compensation for past action if:

A. Being a public servant, he solicits, accepts or agrees to accept any pecuniary benefit in return for having given a decision, opinion, recommendation, nomination, vote, otherwise exercised his discretion, or for having violated his duty; or [1975, c. 499, §1 (NEW) .]

B. He promises, offers or gives any pecuniary benefit, acceptance of which would be a violation of paragraph A. [1975, c. 499, §1 (NEW) .]

2. Improper compensation for past action is a Class D crime.

[1975, c. 499, §1 (NEW) .]

SECTION HISTORY

1975, c. 499, §1 (NEW) .

17-A §605. IMPROPER GIFTS TO PUBLIC SERVANTS

1. A person is guilty of improper gifts to public servants if:

A. Being a public servant that person solicits, accepts or agrees to accept any pecuniary benefit from a person if the public servant knows or reasonably should know that the purpose of the donor in making the gift is to influence the public servant in the performance of the public servant's official duties or vote, or is intended as a reward for action on the part of the public servant; or [1999, c. 149, §1 (AMD) .]

B. He knowingly gives, offers, or promises any pecuniary benefit prohibited by paragraph A. [1975, c. 499, §1 (NEW) .]

[1999, c. 149, §1 (AMD) .]

2. Improper gifts to public servants is a Class E crime.

[1975, c. 499, §1 (NEW) .]

SECTION HISTORY

1975, c. 499, §1 (NEW). 1999, c. 149, §1 (AMD) .

17-A §606. IMPROPER COMPENSATION FOR SERVICES

1. A person is guilty of improper compensation for services if:

A. Being a public servant, he solicits, accepts or agrees to accept any pecuniary benefit in return for advice or other assistance in preparing or promoting a bill, contract, claim or other transaction or proposal as to which he knows that he has or is likely to have an official discretion to exercise; or [1975, c. 499, §1 (NEW) .]

B. He gives, offers or promises any pecuniary benefit, knowing that it is prohibited by paragraph A. [1975, c. 499, §1 (NEW) .]

2. Improper compensation for services is a Class E crime.

[1975, c. 499, §1 (NEW) .]

SECTION HISTORY

1975, c. 499, §1 (NEW) .

17-A §607. PURCHASE OF PUBLIC OFFICE

1. A person is guilty of purchase of public office if:

A. He solicits, accepts or agrees to accept, for himself, another person, or a political party, money or any other pecuniary benefit as compensation for his endorsement, nomination, appointment, approval or disapproval of any person for a position as a public servant or for the advancement of any public servant; or [1975, c. 499, §1 (NEW) .]

B. He knowingly gives, offers or promises any pecuniary benefit prohibited by paragraph A. [1975, c. 499, §1 (NEW) .]

2. Purchase of public office is a Class D crime.

[1975, c. 499, §1 (NEW) .]

SECTION HISTORY

1975, c. 499, §1 (NEW).

17-A §608. OFFICIAL OPPRESSION

1. A person is guilty of official oppression if, being a public servant and acting with the intention to benefit himself or another or to harm another, he knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.

[1975, c. 499, §1 (NEW) .]

2. Official oppression is a Class E crime.

[1975, c. 499, §1 (NEW) .]

SECTION HISTORY

1975, c. 499, §1 (NEW).

17-A §609. MISUSE OF INFORMATION

1. A person is guilty of misuse of information if, being a public servant and knowing that official action is contemplated, or acting in reliance on information which he has acquired by virtue of his office or from another public servant, he:

A. Acquires or divests himself of a pecuniary interest in any property, transaction or enterprise which may be affected by such official action or information; or [1975, c. 499, §1 (NEW) .]

B. Speculates or wagers on the basis of such official action or information; or [1975, c. 499, §1 (NEW) .]

C. Knowingly aids another to do any of the things described in paragraphs A and B. [1975, c. 499, §1 (NEW) .]

[1975, c. 499, §1 (NEW) .]

2. Misuse of information is a Class E crime.

[1975, c. 499, §1 (NEW) .]

SECTION HISTORY

1975, c. 499, §1 (NEW).

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17 MRSA §3104. CONFLICTS OF INTEREST; PURCHASES BY THE STATE

No trustee, superintendent, treasurer or other person holding a place of trust in any state office or public institution of the State shall be pecuniarily interested directly or indirectly in any contracts made in behalf of the State or of the institution in which he holds such place of trust, and any contract made in violation hereof is void. This section shall not apply to purchases of the State by the Governor under authority of Title 1, section 814. [1975, c. 771, §164 (AMD).]

5 MRSA §18. DISQUALIFICATION OF EXECUTIVE EMPLOYEES FROM PARTICIPATION IN CERTAIN MATTERS

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Constitutional officers" means the Attorney General, Secretary of State and Treasurer of State. [1979, c. 734, §2 (NEW) .]

B. "Executive employee" means the constitutional officers, the State Auditor, members of the state boards and commissions as defined in chapter 379 and compensated members of the classified or unclassified service employed by the Executive Branch, but it shall not include:

- (1) The Governor;
- (2) Employees of and members serving with the National Guard;
- (3) Employees of the University of Maine System, the Maine Maritime Academy and state community colleges;
- (4) Employees who are employees solely by their appointment to an advisory body;
- (5) Members of boards listed in chapter 379, who are required by law to represent a specific interest, except as otherwise provided by law; and
- (6) Members of advisory boards as listed in chapter 379. [1989, c. 443, §5 (RPR); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

C. "Participate in his official capacity" means to take part in reaching a decision or recommendation in a proceeding that is within the authority of the position he holds. [1979, c. 734, §2 (NEW) .]

D. "Proceeding" means a proceeding, application, request, ruling, determination, award, contract, claim, controversy, charge, accusation, arrest or other matter relating to governmental action or inaction. [1979, c. 734, §2 (NEW) .]

E. "Participates in the legislative process" means to provide any information concerning pending legislation to a legislative committee, subcommittee or study or working group, whether orally or in writing. [1999, c. 242, §1 (NEW) .]

[1999, c. 242, §1 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

2. Executive employee. An executive employee commits a civil violation if he personally and substantially participates in his official capacity in any proceeding in which, to his knowledge, any of the following have a direct and substantial financial interest:

A. Himself, his spouse or his dependent children; [1979, c. 734, §2 (NEW) .]

B. His partners; [1979, c. 734, §2 (NEW) .]

C. A person or organization with whom he is negotiating or has agreed to an arrangement concerning prospective employment; [1979, c. 734, §2 (NEW) .]

D. An organization in which he has a direct and substantial financial interest; or [1979, c. 734, §2 (NEW) .]

E. Any person with whom the executive employee has been associated as a partner or a fellow

shareholder in a professional service corporation pursuant to Title 13, chapter 22-A, during the preceding year. [2001, c. 2, Pt. C, §7 (AFF); 2001, c. 2, Pt. C, §1 (COR) .]

[2001, c. 2, Pt. C, §7 (AFF); 2001, c. 2, Pt. C, §1 (COR) .]

2-A. Participation in legislative process. An executive employee commits a civil violation if the employee participates in the legislative process in the employee's official capacity concerning any legislation in which any person described in subsection 2, paragraphs A to E has any direct and substantial financial interest unless the employee discloses that interest at the time of the employee's participation.

[1999, c. 242, §2 (NEW) .]

3. Former executive employee. Former executive employees shall be subject to the provisions in this subsection with respect to proceedings in which the State is a party or has a direct and substantial interest.

A. No former executive employee may knowingly act as an agent or attorney for, or appear personally before, a state or quasi-state agency for anyone other than the State for a one-year period following termination of the employee's employment with the agency or quasi-state agency in connection with a proceeding in which the specific issue was pending before the executive employee's agency and was directly within the responsibilities of the employee during a period terminating at least 12 months prior to the termination of that employee's employment. [1987, c. 784, §2 (RPR) .]

B. No former executive employee may knowingly act as an agent or attorney for, or appear personally before, a state or quasi-state agency for anyone other than the State at any time following termination of the employee's employment with the agency or quasi-state agency in connection with a proceeding in which the specific issue was pending before the executive employee's agency and was directly within the responsibilities of the executive employee during the 12-month period immediately preceding the termination of the employee's employment. [1987, c. 784, §2 (RPR) .]

[1987, c. 784, §2 (RPR) .]

4. Construction of section. This section may not be construed to prohibit former state employees from doing personal business with the State. This section shall not limit the application of any provisions of Title 17-A, chapter 25.

[1979, c. 734, §2 (NEW) .]

5. Penalty. A violation of this section is a civil violation for which a forfeiture of not more than \$1,000 may be adjudged.

[1979, c. 734, §2 (NEW) .]

6. Application of more stringent statutory provisions. If other statutory conflict of interest provisions pertaining to any state agency, quasi-state agency or state board are more stringent than the provisions in this section, the more stringent provisions shall apply.

[1987, c. 784, §3 (NEW) .]

7. Avoidance of appearance of conflict of interest. Every executive employee shall endeavor to avoid the appearance of a conflict of interest by disclosure or by abstention. For the purposes of this subsection and subsection 8, "conflict of interest" includes receiving remuneration, other than reimbursement for reasonable travel expenses, for performing functions that a reasonable person would expect to perform as part of that person's official responsibility as an executive employee.

[2001, c. 203, §1 (AMD) .]

8. Disclosure of conflict of interest. An executive employee shall disclose immediately to that employee's direct supervisor any conflict of interest within the meaning of this section.

[1999, c. 242, §3 (NEW) .]

5 MRSA §18-A. CONFLICT OF INTEREST; CONTRACT WITH THE STATE

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "State entity" means any office, department, agency, authority, commission, board, institution, hospital or other instrumentality of the State. [2001, c. 203, §2 (NEW) .]

B. "Executive employee" has the same meaning as set forth in section 19, subsection 1, paragraph D except that "executive employee" includes employees of and members serving with the National Guard and employees of the University of Maine System, the Maine Maritime Academy and the state community colleges. [2001, c. 203, §2 (NEW); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

[2001, c. 203, §2 (NEW); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

2. Prohibition. An executive employee may not have any direct or indirect pecuniary interest in or receive or be eligible to receive, directly or indirectly, any benefit that may arise from any contract made on behalf of the State when the state entity that employs the executive employee is a party to the contract.

[2001, c. 203, §2 (NEW) .]

3. Violative contract void. Any contract made in violation of this section is void.

[2001, c. 203, §2 (NEW) .]

4. Exemptions. This section does not apply:

A. To purchases by the Governor under authority of Title 1, section 814; [2001, c. 203, §2 (NEW) .]

B. To contracts made with a corporation that has issued shares to the public for the general benefit of that corporation; or [2001, c. 203, §2 (NEW) .]

C. If an exemption is approved by the Director of the Bureau of General Services within the Department of Administrative and Financial Services or the director's designee based upon one of the following and if the director gives notice of the granting of this exemption to all parties bidding on the contract in question with a statement of the reason for the exemption and if an opportunity is provided for any party to appeal the granting of the exemption:

(1) When the private entity or party that proposes to contract with the State and that employs the executive employee, based upon all relevant facts, is the only reasonably available source to provide the service or product to the State, as determined by the director; or

(2) When the director determines that the amount of compensation to be paid to the private entity or party providing the service or product to the State is de minimis. [2001, c. 203, §2 (NEW) .]

[2001, c. 203, §2 (NEW) .]

5 MRSA §19. FINANCIAL DISCLOSURE BY EXECUTIVE EMPLOYEES

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Appointed executive employee" means a compensated member of the classified or unclassified service employed by the Executive Branch, who is appointed by the Governor and confirmed by the Legislature, or who serves in a major policy-influencing position, except assistant attorneys general, as set forth in chapter 71. [1987, c. 784, §4 (AMD) .]

B. "Constitutional officers" means the Governor, Attorney General, Secretary of State and Treasurer of State. [1979, c. 734, §2 (NEW) .]

C. "Elected executive employee" means the constitutional officers and the State Auditor. [1979, c. 734, §2 (NEW) .]

D. "Executive employee" means an appointed executive employee or an elected executive employee. [1979, c. 734, §2 (NEW) .]

E. "Gift" means anything of value, including forgiveness of an obligation or debt, given to a person without that person providing equal or greater consideration to the giver. "Gift" does not include:

(1) Gifts received from a single source during the reporting period with an aggregate value of \$300 or less;

(2) A bequest or other form of inheritance; and

(3) A gift received from a relative. [1989, c. 561, §13 (RPR) .]

F. "Honorarium" means a payment of money or anything with a monetary resale value to a person for an appearance or a speech by the person. "Honorarium" does not include reimbursement for actual and necessary travel expenses for an appearance or speech. "Honorarium" does not include a payment for an appearance or a speech that is unrelated to the person's official capacity or duties. [1989, c. 561, §14 (NEW) .]

G. "Immediate family" means a person's spouse or dependent children. [1989, c. 561, §14 (NEW) .]

H. "Income" means economic gain to a person from any source, including, but not limited to, compensation for services, including fees, commissions and payments in-kind; income derived from business; gains derived from dealings in property, rents and royalties; income from investments including interest, capital gains and dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; income from an interest in an estate or trust; prizes; and grants, but does not include gifts. Income received in-kind includes, but is not limited to, the transfer of property and options to buy or lease and stock certificates. Income does not include alimony and separate maintenance payments. [1989, c. 561, §14 (NEW) .]

I. "Relative" means an individual who is related to the executive employee or the executive employee's spouse as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister, and shall be deemed to include the fiance or fiancée of the executive employee. [1989, c. 561, §14 (NEW) .]

I-1. "Reportable liabilities" means any unsecured loan, except a loan made as a campaign

contribution recorded as required by law, of \$3,000 or more received from a person not a relative. Reportable liabilities do not include:

- (1) A credit card liability;
- (2) An educational loan made or guaranteed by a governmental entity, educational institution or nonprofit organization; or
- (3) A loan made from a state or federally regulated financial institution for business purposes. [1991, c. 331, §2 (NEW).]

J. "Self-employed" means that the person qualifies as an independent contractor under Title 39-A, section 102, subsection 13. [1991, c. 885, Pt. E, §6 (AMD); 1991, c. 885, Pt. E, §47 (AFF).]

[1991, c. 885, Pt. E, §6 (AMD); 1991, c. 885, Pt. E, §47 (AFF) .]

2. Statement of sources of income. Each executive employee shall annually file with the Commission on Governmental Ethics and Election Practices a sworn and notarized statement of finances for the preceding calendar year. The statement must indicate:

- A. If the executive employee is an employee of another person, firm, corporation, association or organization, the name and address of the employer and each other source of income of \$1,000 or more; [1989, c. 608, §3 (AMD).]
- B. If the executive employee is self-employed, the name and address of the executive employee's business and the name of each source of income derived from self-employment that represents more than 10% of the employee's gross income or \$1,000, whichever is greater, except that, if this form of disclosure is prohibited by statute, rule or an established code of professional ethics, the employee shall specify the principal type of economic activity from which the income is derived. With respect to all other sources of income, a self-employed executive employee shall name each source of income of \$1,000 or more. The employee shall also indicate major areas of economic activity and, if associated with a partnership, firm, professional association or similar business entity, the major areas of economic activity of that entity; [2007, c. 704, §5 (AMD).]
- C. The specific source of each gift received; [1989, c. 561, §15 (NEW).]
- D. The type of economic activity representing each source of income of \$1,000 or more that any member of the immediate family of the executive employee received and the name of the spouse or domestic partner of the executive employee. The disclosure must include the job title of the executive employee and immediate family members if the source of income is derived from employment or compensation; [2007, c. 704, §5 (AMD).]
- E. The name of each source of honoraria that the executive employee accepted; [1989, c. 561, §15 (NEW).]
- F. Each executive branch agency before which the executive employee or any immediate family member has represented or assisted others for compensation; and [1989, c. 561, §15 (NEW).]
- G. Each executive branch agency to which the executive employee or the employee's immediate family has sold goods or services with a value in excess of \$1,000. [1989, c. 608, §3 (AMD).]

In identifying the source of income, it is sufficient to identify the name and address and principal type of economic activity of the corporation, professional association, partnership, financial

institution, nonprofit organization or other entity or person directly providing the income to the individual.

With respect to income from a law practice, it is sufficient for attorneys-at-law to indicate their major areas of practice and, if associated with a law firm, the major areas of practice of the firm.

[2007, c. 704, §5 (AMD) .]

2-A. Statement of interests. Beginning in 2010, each executive employee shall annually file with the Commission on Governmental Ethics and Election Practices a sworn and notarized statement of those positions set forth in this subsection for the preceding calendar year. The statement must include:

A. Any offices, trusteeships, directorships or positions of any nature, whether compensated or uncompensated, held by the executive employee with any for-profit or nonprofit firm, corporation, association, partnership or business; and [2007, c. 704, §6 (NEW) .]

B. Any offices, trusteeships, directorships or positions of any nature, whether compensated or uncompensated, held by a member of the immediate family of the executive employee with any for-profit or nonprofit firm, corporation, association, partnership or business and the name of that member of the executive employee's immediate family. [2007, c. 704, §6 (NEW) .]

[2007, c. 704, §6 (NEW) .]

3. Time for filing.

A. An elected executive employee shall file an initial report within 30 days of his election. An appointed executive employee shall file an initial report prior to confirmation by the Legislature. [1979, c. 734, §2 (NEW) .]

B. Each executive employee shall file the annual report prior to the close of the 2nd week in April, unless that employee has filed an initial or updating report during the preceding 30 days; except that, if an elected or appointed executive employee has already filed a report for the preceding calendar year pursuant to paragraph A, a report does not need to be filed. [2001, c. 75, §3 (AMD) .]

C. Each executive employee whose income substantially changes shall file a report of that change within 30 days of it. [1979, c. 734, §2 (NEW) .]

[2001, c. 75, §3 (AMD) .]

4. Penalties. Failing to file the statement within 15 days of having been notified by the Commission on Governmental Ethics and Election Practices of failing to meet the requirements of subsection 2 is a civil violation for which a fine of not more than \$100 may be adjudged.

[2007, c. 704, §7 (AMD) .]

5. Rules. The Commission on Governmental Ethics and Election Practices may adopt or amend rules to specify the reportable categories or types and the procedures and forms for reporting and to administer this section.

[2007, c. 704, §8 (AMD) .]

6. Public record. Statements filed under this section are public records. The Commission on Governmental Ethics and Election Practices shall publish on a publicly accessible website the completed forms of executive employees filed under this section.

[2007, c. 704, §9 (AMD) .]

7. Disclosure of reportable liabilities. Each executive employee shall include on the statement of income under subsection 2 all reportable liabilities incurred while employed as an executive employee. The executive employee shall file a supplementary statement with the Secretary of State of any reportable liability within 30 days after it is incurred. The report must identify the creditor in the manner of subsection 2.

[1991, c. 331, §3 (AMD) .]

Financial Disclosure by Executive Employees

Filing Form Covering Calendar Year 2008

Filing Deadline: Thursday, April 30, 2009, 5 p.m.

(Write "N/A" if a question is not applicable to you. Use additional sheets if needed to fully answer any question.)

Section 1: Name/Address/Phone

Your name:

Your Agency/Department/Bureau/Division:

Your Title:

Your State Agency Mailing Address:

Your State Agency Phone Number:

Section 2: Statement of sources of income

(as required by 5 MRSA §19 sub-§2)

2. Aside from employment in state government: If during 2008 you were neither separately employed by another person, firm, corporation, association or organization, nor self-employed, nor had any other sources of income over \$1000 from each source, check the following box and skip to question 3.

☐

2-A. If, during 2008, you were an employee of another person, firm, corporation, association, or organization as opposed to being self-employed, fill out the following; if not, go to question 2-B:

The name of the employing entity:

Its address:

The nature of the business (its principal type of economic activity; for a law firm, the firm's major areas of practice):

	<p>2-B. If you were self-employed during 2008: (Note: "Self-employed" is defined by 5 MRSA §19 sub-§1 ¶J as an "independent contractor" as defined in 39-A MRSA §102 sub-§13, which says in part: "'Independent contractor' means a person who performs services for another under contract, but who is not under the essential control or superintendence of the other person while performing those services." It does not cover interest income and similar non-contracted income, sources for which should be reported under question 2-C below.)</p>
	<p>The name of your business:</p>
	<p>Its address:</p>
	<p>The nature of the business (your principal type of economic activity; for an attorney, your major areas of practice):</p>
	<p>Name each source of income through self-employment that brings either:</p> <ul style="list-style-type: none"> · more than \$1000; or · more than 10% of your gross income <p>whichever is greater, excluding gifts. (To clarify this: if no source contributes more than \$1000, you don't have to report. If you enjoy many large sources over \$1000, you have to report only those that contribute more than 10% to your gross. For a definition of income, see 5 MRSA §19 sub-§1 ¶H, attached; of gifts, 5 MRSA §19 sub-§1 ¶E. If this form of disclosure is prohibited by statute, rule, or an established code of ethics for your profession, specify instead the principal type of economic activity from which sources of income under this paragraph derive.)</p>
	<p>2-C. If you had other sources of income over \$1000 each, excluding gifts, list them here. (For a definition of income, see 5 MRSA §19 sub-§1 ¶H, attached; of gifts, 5 MRSA §19 sub-§1 ¶E.)</p>

Section 3. Gifts

List the specific source of each gift received:
(For a definition of gifts, see 5 MRSA §19 sub-§1 ¶E, attached.)

Section 4. Family Member Income

List here the type of economic activity engaged in by any member of your immediate family which resulted in \$1,000 or more in 2008. If the income was received by your spouse or domestic partner, list his or her name. If the income received by an immediate family member is derived from employment or compensation, also include the job title.

Section 5. Honoraria

List here the sources of any honoraria (not travel or expenses) accepted for appearances or speeches related to your official duties. (For a definition of honorarium, see 5 MRSA §19 sub-§1 ¶F, attached. Note that this involves honoraria in any amount, not just amounts over \$1000.)

Section 6. Compensated work on behalf of executive branch agencies

Aside from your official salary, list here each executive agency before which you or an immediate family member has represented or assisted others in return for compensation of any amount:

Section 7. Sales to executive branch agencies

List here each executive branch agency to which you or your immediate family members sold goods or services with a value in excess of \$1000:

Section 8. Reportable liabilities

List here the name(s) of your creditors for any reportable liabilities (unsecured loans) of \$3000 or more received from a person not a relative. This does not include credit card liabilities, most educational loans, campaign contributions otherwise recorded by law, or business loans from most financial institutions. (For a definition of reportable liabilities, see 5 MRSA §19 sub-§1 ¶11-1, attached; of relatives, same, ¶11.)

Oath or Affirmation (Notarization)

"Do you solemnly swear (affirm) that the contents of this report are known to you and that the matters and things therein set forth are true (so help you God)?"

Signature of Executive Employee: _____

Date: _____

Subscribed and sworn (affirmed) to before me this _____ day of _____, 200____.

Signature of Maine Notary Public: _____

Notary Public, State of Maine

My commission expires (date)

Seal (optional)

Return to:
Cyndi Phillips, Commission Assistant
Commission on Governmental Ethics and Election Practices
135 State House Station, Augusta, ME 04333-0135

5 MRSA §20-A. USE AND ACQUISITION OF STATE PROPERTY

1. Use of state property. An employee of the State may not take state property off the premises of the State for personal use or for the use of others without prior written approval of the head of the department for which that employee works.

[1995, c. 280, §2 (NEW) .]

2. Acquisition of state property. Within 3 months of leaving office or employment with the State, an employee of the State, in accordance with rules adopted by the Commissioner of Administrative and Financial Services and this chapter, may purchase at fair market value state property that was assigned to the employee or state property of which the employee was the principal user at the time of that employee's employment. The commissioner, by rule, shall determine state property that may be offered for sale under this chapter. State property may not be offered for sale under this chapter until the commissioner determines that the property is eligible for sale and that no state agency has any need or use for the property. This section may not be interpreted to prohibit an employee of the State or any other person from purchasing state property at fair market value in accordance with this chapter as a gift to an employee of this State upon that employee's retiring or leaving office.

[1995, c. 280, §2 (NEW) .]

3. Return of state property. If an employee or former employee of the State is in possession of state property in violation of subsection 1, the State may bring an action for injunctive relief seeking the return of the state property. The action may be brought in Superior Court in the county where the alleged violation occurred, Kennebec County or the county where the person against whom the civil complaint is filed resides. If a violation of subsection 1 is established, the court may enjoin the violation and order the return of the state property.

[1995, c. 280, §2 (NEW) .]

5 MRSA § 7051. GENERAL PROVISIONS

The following provisions apply to the classified and unclassified services or to the specific services as specified in this section. [1985, c. 785, Pt. B, §38 (NEW) .]

1. Citizenship. In making appointments to or recruiting for any position on an open competitive basis in the classified service, preference shall be given to citizens of the United States. This requirement may be waived by the director on an individual basis when there exists compelling reasons for the waiver.

[1985, c. 785, Pt. B, §38 (NEW) .]

2. Discrimination prohibited. In carrying out this chapter, no discrimination may be made on account of political or religious opinions or affiliations or because of race or national origin, sex or marital status or age or physical disability, unless based upon a bona fide occupational qualification.

[1985, c. 785, Pt. B, §38 (NEW) .]

3. Hiring and promoting neutrality. The final decision of whether a person will be hired or promoted by the State may not be made in part or wholly by a person related to the job candidate by consanguinity or affinity within the 4th degree. The director by rules shall insure that this section will not deprive any applicant or employee of full consideration for hiring or promotion.

[1985, c. 785, Pt. B, §38 (NEW) .]

4. Employees in military service; substitutes. Whenever any employee, regularly employed in other than a temporary position for a period of at least 6 months by the State or by any department, bureau, commission or office of the State, or by the University of Maine System, community colleges, Maine School Building Authority, Maine Turnpike Authority, Finance Authority of Maine or any other state or quasi-state agency, or by any county, municipality, township or school district within the State shall in time of war, contemplated war, emergency or limited emergency, enlist, enroll, be called or ordered or be drafted into the Armed Forces of the United States or any branch or unit thereof, or shall be regularly drafted under federal manpower regulations, the employee shall not be deemed or held to have thereby resigned from or abandoned employment, nor shall be removable during the period of service. "Temporary," for the purpose of this section means employment based on a seasonal or on-call basis or employment based on a contract of less than 6 months' duration.

A. [2001, c. 662, §1 (RP) .]

B. [2001, c. 662, §2 (RP) .]

C. [2001, c. 662, §2 (RP) .]

D. [2001, c. 662, §3 (RP) .]

E. When a permanent classified employee is on extended leave, a substitute may be employed, subject to personnel rules, until return or separation of the incumbent. [1985, c. 785, Pt. B, §38 (NEW) .]

[2001, c. 662, §1-3 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

5. Probationary period; permanent appointments. All original appointments to the classified service and all subsequent promotional appointments within the classified service shall be for a

5 MRSA §7056-A. POLITICAL ACTIVITY

1. Use of official authority. An officer or employee in the classified service or an employee from the executive branch in the unclassified service of this State may not use that officer's or employee's official authority, influence or supervisory position for the purpose of:

- A. Interfering with or affecting the result of a partisan election or nomination for elective office; or [1997, c. 498, §6 (NEW) .]
- B. Attempting to intimidate, threaten, coerce, command or influence a person to give or withhold a political contribution or to engage or not to engage in any form of political activity as defined in this section. [1997, c. 498, §6 (NEW) .]

For the purpose of this subsection, "use of official authority or influence" includes promising to confer or conferring a benefit such as compensation, a grant, contract, license or ruling; effecting or threatening to effect a reprisal, such as deprivation of compensation, a grant, contract, license or ruling; or taking, directing others to take, recommending, processing or approving any personnel action.

[1997, c. 498, §6 (NEW) .]

2. Political contributions. An officer or employee in the classified service or an employee from the executive branch in the unclassified service of this State may not:

- A. Give or offer to give a political contribution to an individual to vote or refrain from voting or to vote for or against any candidate or measure in any partisan election; [1997, c. 498, §6 (NEW) .]
- B. Solicit, accept or receive a political contribution to vote or refrain from voting or to vote for or against any candidate or measure in any partisan election; [1997, c. 498, §6 (NEW) .]
- C. Knowingly give or hand over a political contribution to a superior of the employee; [1997, c. 498, §6 (NEW) .]
- D. Knowingly solicit, accept or receive or be in any manner concerned with soliciting, accepting or receiving a political contribution from another employee or a member of another employee's immediate family who is a subordinate of the employee; or [1997, c. 498, §6 (NEW) .]
- E. Knowingly solicit, accept or receive a political contribution from or give a political contribution to any person who:

- (1) Has or is seeking to obtain contractual or other business or financial relations with the agency in which the employee is employed;
- (2) Conducts operations or activities that are regulated by that agency; or
- (3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties. [1997, c. 498, §6 (NEW) .]

[1997, c. 498, §6 (NEW) .]

3. Political activity. An officer or employee in the classified service or an employee from the executive branch in the unclassified service of this State may not engage in political activity:

- A. When the employee is on duty; [1997, c. 498, §6 (NEW) .]
- B. In state-owned or leased work space occupied in the discharge of official duties or by using

the facilities or services of the State; or [1997, c. 498, §6 (NEW) .]

C. When wearing a uniform or official insignia identifying the office or position of the employee or while using a vehicle owned or leased by the State or its agencies. [1997, c. 498, §6 (NEW) .]

As used in this subsection, political activity means to advocate expressly for the election or defeat of any candidate for a federal office, a constitutional office or any candidate for partisan elective municipal, county or state office, including leadership positions in the Senate and the House of Representatives or to solicit contributions reportable under Title 21-A, chapter 13.

[1997, c. 498, §6 (NEW) .]

4. Candidacy for elective office. An officer or employee in the classified service or an employee from the executive branch in the unclassified service of this State, except for an officer or enlisted person in the Maine National Guard, may not be a candidate for elective office in a partisan public election other than for a local office. This subsection may not be construed as prohibiting an officer or employee of the State from being a candidate in an election if none of the candidates is nominated or elected at that election as representing a party whose candidates for presidential elector received votes in the last preceding election during which presidential electors were selected. Law enforcement officers continue to be subject to departmental rules regarding procedures on candidacy.

[2007, c. 130, §1 (AMD) .]

5. Rights of voting and free expression. An officer or employee in the classified service or an employee from the executive branch in the unclassified service of this State retains the right to vote as that officer or employee chooses and to express opinions on political subjects and candidates.

[1997, c. 498, §6 (NEW) .]

6. Rights of participation in political organizations and activities. An officer or an employee of the classified service or an employee from the executive branch in the unclassified service of this State may:

A. Campaign for and hold an elective office in political clubs and organizations; [1997, c. 498, §6 (NEW) .]

B. Contribute money to political organizations or attend political fundraising functions; [1997, c. 498, §6 (NEW) .]

C. Donate personal time and service to a political cause; [1997, c. 498, §6 (NEW) .]

D. Be a candidate for public office in a nonpartisan election; and [1997, c. 498, §6 (NEW) .]

E. Participate in any other activity not specifically prohibited by state or federal law. [1997, c. 498, §6 (NEW) .]

[1997, c. 498, §6 (NEW) .]

7. Exemption of official duties. This section may not be construed to apply to any actions taken in order to carry out the duties and responsibilities of an officer's or employee's position, including but not limited to advocacy on policy issues or legislation.

[1997, c. 498, §6 (NEW) .]



OFFICE OF
THE GOVERNOR

NO. 10 FY88/89

DATE April 1, 1989

AN ORDER
ESTABLISHING A CODE OF ETHICS AND CONDUCT
FOR THE EXECUTIVE BRANCH
OF MAINE STATE GOVERNMENT

Whereas, the government of the State of Maine is established to serve the needs and interests of the People of the State of Maine; and

Whereas, the quality and amount of service provided the People depends very largely on the skill, commitment, enthusiasm, effort, and concerns of Maine State employees; and

Whereas, each State employee has inordinate opportunity for service and contribution, just as the employee has a singular trust and responsibility given by the power of the People; and

Whereas, the high quality and character of the collective performance of public servants are a fundamental source of pride and satisfaction to each one of us as individuals; and

Whereas, the Maine Revised Statutes include specific requirements for public employees and officials, including among others: Title 5, Sections 18, 19, and 20; Title 17, Section 3104; and Title 17-A, Chapter 25, Section 601 et. seq.; and

Whereas, our conduct must be more than within the letter of the law; it must seek to fulfill the spirit and intent; and

Whereas, a clear statement of the code of ethics and conduct which guides Maine State Government is both an assurance to the People and an aid to our steadfast efforts;

Now, Therefore, I, John R. McKernan, Jr., Governor of the State of Maine, do hereby set forth a code of ethics and conduct for the Officers and Employees of Maine State Government, as follows:

Code of Ethics
Maine State Government

1. Be guided by the highest standards of honor, personal integrity, and fortitude in all public activities in order to merit the respect of other officials, employees, and the public. Strive to inspire public confidence and trust in Maine State Government institutions.

Perceptions of others are critical to the reputation of an individual or a public agency. Nothing is more important to public administrators than the public's opinion regarding their honesty, truthfulness, and personal integrity. The best insurance against loss of public confidence is adherence to the highest standards.

Public administrators are obligated to develop civic virtues as a result of the public responsibilities they have sought and obtained. Respect for the truth, for fairly dealing with others, for sensitivity to rights and responsibilities of citizens, and for the public good must be developed, carefully nurtured and enhanced.

If responsible for the performance of others, share with them the reasons for the importance of integrity. Hold them to high ethical standards and teach them by example the moral, as well as the financial, responsibility entrusted to them.

If responsible only for your own performance, do not compromise honesty and integrity for advancement, honors, or personal gain. Be respectful of proper authority and appointed or elected superiors and sensitive to the expectations and the values of the public you serve. Practice the golden rule: doing to and for others what you would have done to and for you in similar circumstances. Be modest about your talents, letting your work speak for you. Be generous in praise of the good work of fellow workers. Guard the public purse as if it were your own.

By example, give testimony to the regard for the rights of others. Concede gracefully, quickly, and publicly when you have erred. Be fair and sensitive to those who have not fared well in their dealings with your agency and its application of the law, regulations, or administrative procedures.

2. Serve the State with respect, concern, courtesy, and responsiveness, recognizing that government service is service to the People of Maine. Keep the Legislature and public informed on pertinent issues.

Be sure answers to questions on public policy are complete, understandable and true. Encourage staff to be courteous to everyone at all times. Devise a simple system to ensure that staff gives helpful and pleasant service to the public. Wherever possible, show citizens how to deal effectively in their relations with government.

Each citizen's questions should be answered as thoughtfully and as fully as possible. If you or your staff do not know the answer to a question, an effort should be made to obtain an answer or to help the citizen make direct contact with the appropriate office.

Part of serving the public responsively is to encourage citizen cooperation and to involve civic groups. Administrators have responsibility to involve citizens with the government as far as practical, both to secure citizen support of government, and for the economies of increased effectiveness which may result. Respect the right of the public to be aware of the activities of your agency.

3. Strive for professional excellence and encourage the professional development of associates and those seeking to enter the field of public administration in order to provide effective and responsible government to the citizens of Maine. The primary role is to provide the best possible and most cost effective service to the citizens of Maine.

All employees should attend professional development meetings, read books and periodicals related to their field, and talk with specialists. The goal is to keep informed about the present and future issues and problems in a professional field and organization in order to take advantage of opportunities and avoid problems.

Serious mistakes in public administration have been made by people who did their jobs conscientiously but failed to look ahead for emerging problems and issues. State employees should be catalysts to stimulate discussion and reflection about improving efficiency and effectiveness of public services and involvement.

4. Approach organization and operational duties with a positive attitude and constructively support open communication, cooperation, creativity, dedication and compassion.

Americans expect government to be compassionate, well organized, and to operate within the law. Public employees should understand the purposes of their agencies and the roles they play in achieving those purposes. Dedication and creativity of staff members will flow from a sense of purpose.

Maine Government should strive to create a work environment which supports positive and constructive attitudes among workers at all levels. This open environment should permit employees to comment on work activities without fear of reprisal. In addition, managers can strengthen this open environment by establishing procedures ensuring thoughtful and objective review of employee concerns.

Supervisors should inform their staff that suggestions, complaints and constructive criticism may be brought to them without fear of reprisal. Employees should share these concerns and insights with their supervisor before making them public. Supervisors should be aware that employees have rights under the "Whistleblowers' Protection Act," under legislation regarding testimony provided by State employees to legislative committees, and other laws and judicial decisions. Public employees have a right to make public their criticism on matters of public concern, but it is their personal and professional responsibility not to misrepresent facts and to act in good faith. Employees need to make it clear when they are acting as an official representative of their organization and when they are exercising their rights as an individual.

5. Avoid any interest or activity which is in conflict with the conduct of official duties. Serve in a manner as to avoid inappropriate personal gain resulting from the performance of official duties.

Public employees should not undertake any task which is in conflict, or could be viewed as in conflict, with job responsibilities. This general statement addresses a fundamental principle that public employees are trustees for all the people. Actions or inactions which conflict with, injure, or destroy this foundation of trust between the people and State employees must be avoided.

Experience indicates that conflict of interest and corruption often arises as a result of interaction between persons who know each other very well. All public employees, especially those agencies with inspective or investigative responsibilities, have a special obligation to reduce vulnerability to conflicts of interest.

Individuals holding a position recognized by law or regulation as an unclassified or political appointment have a special obligation to behave in ways which do not suggest that official acts are driven by partisan political concerns.

Public employees should remember that, despite whatever preventive steps they might take, situations which hold the possibility for conflict of interest will always emerge. Consequently, constant awareness of the potential for conflict of interest is important.

The gains sought from public employment should be salaries, fringe benefits, respect, and recognition for work. Personal gains may also include the pleasure of doing a good job, helping the public, and achieving career goals. No elected or appointed public official or employee should borrow or accept personal gifts from any person or entity which buys services from, or sells to, or is regulated by, his or her governmental agency. If work requires frequent contact with contractors supplying State government, one should be sure to pay for his or her own expenses. Public property, funds and power should never be directed toward personal or political gain. It should be made clear to every State employee that any use of public funds to benefit self, family, or friends will not be tolerated.

6. Respect and protect the privileged information to which we have access in the course of official duties.

Much information in public offices is privileged for reasons of security or statutes. In conversation with colleagues about privileged matters, be sure they need the information and enjoin them to secrecy. If the work is important enough to be confidential, learn and follow the rules set by the agency. Special care must be taken to secure access to confidential information stored on computers.

Where other governmental agencies have a legitimate public service need for information possessed by an agency, do all possible to cooperate within the limits of statute, administrative regulations and promises made to those who furnish the information.

7. Use discretionary authority to promote the public interest.

If work involves discretionary decisions, first secure policy guidelines from your supervisor. Then ensure that all staff who "need to know" are informed of these policies and have an opportunity to discuss the means of putting them into effect.

There are occasions when a law is unenforceable or has become obsolete. In such cases, recommend to your supervisor that the law be modernized. After consultation with the agency's legal advisor, the manager or highest official should determine the steps necessary to modernize or abolish the law.

Acknowledge frequently that every decision creates a precedent, so all decisions should be ethically sound. This is the best protection for staff as well as for the public.

8. Accept, as a personal duty, the responsibility to be informed of emerging issues and to administer the public's business with professional competence, fairness, impartiality, efficiency and effectiveness.

Staff members, throughout their careers, should be encouraged to participate in professional activities and associations. They should also be reminded of the importance of doing a good job and their responsibility to improve the public service.

9. Support, implement, and promote programs of affirmative action to assure equal opportunity in the recruitment, selection, and advancement of qualified persons from all elements of society.

Oppose any discrimination based on race, color, religion, sex, marital status, ancestor or national origin, political affiliation, physical or mental handicaps, or age in all aspects of personnel policy. A person's lifestyle should not be the occasion for discrimination if it bears no reasonable relation to his or her ability to perform required tasks.

No form of harassment should be tolerated. All employees should be aware of and use appropriate channels to eliminate any form of harassment of which they become aware.

10. Respect and value the work done by all State employees.

Respect the worth and dignity of each individual member of the State Government organization. Through programs enhancing the quality of work life, strive to develop a more humane and caring organization.

The effective date of this Order is April 1, 1989.



John R. McKernan, Jr., Governor

**Code of Ethics
Maine State Government**

1. Be guided by the highest standards of honor, personal integrity, and fortitude in all public activities in order to merit the respect of other officials, employees and the public. Strive to inspire public confidence and trust in Maine State Government institutions.
2. Serve the State with respect, concern, courtesy, and responsiveness, recognizing that government service means service to the people of Maine; keep the Legislature and public informed on pertinent issues.
3. Strive for professional excellence and encourage the professional development of associates and those seeking to enter the field of public administration in order to provide effective and responsible government to the citizens of Maine. The primary role is to provide the best possible and most cost effective service to the citizens of Maine.
4. Approach organization and operational duties with a positive attitude and constructively support open communication, cooperation, creativity, dedication and compassion.
5. Avoid any interest or activity which is in conflict with the conduct of official duties. Serve in a manner as to avoid inappropriate personal gain resulting from the performance of official duties.
6. Respect and protect the privileged information to which there is access in the course of official duties.
7. Use discretionary authority to promote the public interest.
8. Accept as a personal duty the responsibility to be informed of emerging issues and to administer the public's business with professional competence, fairness, impartiality, efficiency and effectiveness.
9. Support, implement, and promote programs of affirmative action to assure equal opportunity in the recruitment, selection, and advancement of qualified persons from all elements of society.
10. Respect and value the work done by all State employees.

5 MRSA § 1547. ANNUAL FINANCIAL REPORT OF THE STATE

The State Controller shall prepare a comprehensive annual financial report in accordance with standards established by a governmental accounting standards board. This report is the official annual financial report of the State Government as defined in section 1541, subsection 11. ...

8. Code of ethics for component units, public instrumentalities, related organizations and independent agencies. All component units and related organizations as defined by the governmental accounting standards board and legislatively created public instrumentalities and independent agencies are each required to develop a code of ethics to guide the operations and financial administration of each particular entity. The code of ethics must be disseminated to each employee of such an entity and be available for inspection by the State Controller and State Auditor and the general public. The code of ethics adopted by the executive branch may serve as a model. The State Controller may from time to time ensure that each entity is in compliance with its code of ethics as it applies to financial administration of the entity.

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The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

Amended Work Rule August 14, 2009

POLICY CONCERNING THE USE OF STATE-OWNED INFORMATION AND TECHNOLOGY (I.T.) AND RELATED COMMUNICATIONS EQUIPMENT AND RESOURCES:

NOTE: State information and technology and related communication equipment and resources may include, but is not limited to: Computer workstations, laptops, mobile devices, voice mail, computer networks, printers, copiers, telephones, fax machines, modems, fax modems, e-mail, local and wide area networks, Internet, and Intranet.

PURPOSE

The purpose of this policy is to set out the minimum rules to be followed while using any or all of the State-owned information and technology equipment and resources under the control of the Commission on Governmental Ethics and Election Practices (Ethics Commission).

BACKGROUND

The Ethics Commission provides its employees access to State-owned I.T. equipment and resources to accomplish tasks, process, and communicate to effectively achieve the Ethics Commission's mission, as directed by law and the administration.

The State of Maine "Freedom of Access Law" (1 MRSA, § 401-410) clearly provides that any and all written, printed or graphic matter or any mechanical or electronic data compilation (files, notes, records, copies, etc.), regardless of the media used to store or transmit them (paper, film, microfiche, recordable media, electronic media, etc.) in public offices received or prepared for use in connection with the transaction of public governmental business is public property. As such, the public may have access to those materials for examination. The law places some very narrow restrictions on the public access, such as personnel files, employment applications, employee testing and rating criteria, workers' compensation files, certain investigation files, etc., but most materials are subject to public viewing. Employees are advised that there should be no expectation of privacy when using any State-owned I.T. or related communications equipment or resources.

Use of IT resources, such as e-mail, Internet, social networking media interfaces such as YouTube, Facebook and blogs, etc., are intended to be used for State business purposes. The Ethics Commission employees are provided with a maine.gov email account through which to conduct state business. Ethics Commission employees shall not conduct state business through personal email accounts. (Yahoo, Hotmail, Gmail). Ethics Commission employees should be aware that cell phone, Blackberry and internet messages are generally not secure and can be intercepted by outside parties.¹ Voice mail and e-mail messages may have backup copies that cannot be deleted by the operator. A history of accessed web sites is recorded by most browser software. All of this information may be subject to release under a "Freedom of Access Law" request. Ethics Commission employees and the Office of Information Technology may monitor voice, e-mail, and Internet traffic to improve service levels, enforce this policy, and prevent unauthorized access to State systems.

Unofficial and/or unauthorized use of State-owned equipment places unanticipated and possibly excessive demands on the State's I.T. resources. Accessing unofficial and/or unauthorized sources unnecessarily exposes the State to security risks such as the spread of computer viruses, adware and malware, which may be costly and disruptive to remove.

POLICY

State-owned I.T. equipment and resources are made available to employees to conduct official Ethics Commission business. The use of State-owned I.T. equipment and resources to create, record, store, transmit, distribute, image, modify, print, download, or display inappropriate or unprofessional materials that demean, denigrate, or harass individuals or groups of individuals, on the basis of race, ethnic heritage, religious beliefs, disability, sexual orientation or gender, and/or materials that are

¹ Care should be exercised to avoid inadvertent disclosure of confidential information over these media.

sexually explicit or pornographic in nature, whether or not the material was intended to demean, denigrate or harass any employee or group of employees, is prohibited.

The State's technology resources are not to be used to forward or otherwise broadcast mass communications that are not work related, or solicitations for causes unrelated to the State's business, no matter how worthy the cause may be perceived to be. If in doubt as to whether your proposed e-mail meets these guidelines, contact Personnel Services at 624-7400. Solicitations or mass communications for causes believed to be related to State business should be brief, not endorse any particular product or provider, and should refer readers to a webpage for further information. The Department of Administrative and Financial Services Commissioner or his/her designee must approve such solicitations or mass mailings. [NOTE: In the Capitol area, Capitol Security must give written permission for solicitations. The Maine State Employees Combined Charitable Appeal is the only solicitation with on-going, or "blanket" approval]. State-owned IT resources may not be used to conduct outside business nor may it be used in conjunction with any outside employment activity.

Additionally, state law makes it a crime to use a computer system operated by a state department or agency to advocate for or against a candidate for federal office, a constitutional office, an elective municipal, county or state office, including leadership positions in the Senate and House of Representatives, as well as to solicit contributions required by law to be reported to the Commission on Governmental Ethics and Election Practice.

Any personal use of State-owned I.T. equipment and resources must be incidental in nature. Examples of incidental use may include, but are not limited to, brief e-mails, accessing an appropriate subject on the Internet, phone calls of an urgent nature, using computer capabilities for incidental correspondence, etc.² The use of State-owned resources represents a cost to the State and, as such, printing and copying for personal use is restricted to incidental use only. Any personal, incidental use of State-owned I.T. equipment and resources shall not interfere with the Ethics Commission business activities, must not involve solicitation in any form, must not be associated with any outside business or employment activity, and must not potentially embarrass or offend the State of Maine, its residents, its taxpayers, or its employees.³

GUIDELINES AND PROCEDURES

In the event that an employee inadvertently accesses inappropriate or prohibited material, (to include material deemed as a security risk⁴) the employee is required to immediately secure the material from view. It is recommended that if an employee inadvertently accesses inappropriate or prohibited materials, his or her supervisor or management should be advised of the circumstances surrounding the inadvertent access. This will ensure that the employee can be held harmless for inadvertently accessing the inappropriate or prohibited materials.

If supervisory or management staff become aware that inappropriate or prohibited materials are being accessed, downloaded, or otherwise transmitted to or by an employee in his or her organization, he or she must act immediately to stop such activity. Supervisors and managers should contact the Department of Administrative and Financial Services (DAFS) Director of Human Resources, for guidance and consultation.

These rules may be amended as necessary by State policies and procedures or by updated DECD policies.

Each Ethics Commission employee is expected to comply with this policy. Violation of this policy may lead to progressive discipline, up to and including dismissal consistent with applicable bargaining agreement and/or Civil Service Rules. For further information concerning this policy, contact DAFS Director of Human Resources at 624-7400. For further information technology policies visit the Office of Information Technology website at <http://www.maine.gov/oit/oitpolicies/index.htm>.

² Certain telephone calls and expenses are allowable under the bargaining agreement.

³ As is the case in other situations, the time associated with any incidental personal use of State-owned I.T. resources must not intrude into an employee's work responsibilities.

⁴ <http://maine.gov/oit/oitpolicies/VulnerabilityAssessmentFinal.htm>: "All State employees who suspect a breach of security has occurred will contact the OIT Customer Solutions Center at 624-7700, who will inform the Enterprise Information Security Officer. The Officer will promptly work collaboratively with appropriate AITDs and technical experts to determine the appropriate course of action."

RIDER B
METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** \$ _____

2. **INVOICES AND PAYMENTS** The Department will pay the Provider as follows:

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. The Department will process approved payments within 30 days.

3. **BENEFITS AND DEDUCTIONS** If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

4. **INDEPENDENT CAPACITY** In the performance of this Agreement, the parties hereto agree that the Provider, and any agents and employees of the Provider shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.

5. **DEPARTMENT'S REPRESENTATIVE** The Agreement Administrator shall be the Department's representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.

6. **AGREEMENT ADMINISTRATOR** All progress reports, correspondence and related submissions from the Provider shall be submitted to:

Name: _____
 Title: _____
 Address: _____

who is designated as the Agreement Administrator on behalf of the Department for this Agreement, except where specified otherwise in this Agreement.

- d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.
- e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.
- f. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.
- g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11. **EMPLOYMENT AND PERSONNEL** The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Contractor shall not engage on a full-time, part-time or other basis during the period of this Agreement, any other personnel who are or have been at any time during the period of this Agreement in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time or other basis during the period of this Agreement any retired employee of the Department who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

12. **STATE EMPLOYEES NOT TO BENEFIT** No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly due to his employment by or financial interest in the Provider or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

