

JANET T. MILLS
ATTORNEY GENERAL



REGIONAL OFFICES:
84 HARLOW ST. 2ND FLOOR
BANGOR, MAINE, 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

44 OAK STREET, 4TH FLOOR
PORTLAND, MAINE, 04101-3014
TEL: (207) 822-0260
FAX: (207) 822-0259
TDD: (877) 428-8800

14 ACCESS HIGHWAY, STE. 1
CARIBOU, MAINE, 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

TEL: (207) 626-8800
TTY: 1-888-577-6690

STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

March 16, 2009

Via Electronic and First Class U.S. Mail

Mr. Alec Giffen
Dept. of Conservation
22 State House Station
Augusta ME 04333-0022

Dear Mr. Giffen:

This letter responds to your request for legal advice with respect to the application of antitrust law to the workings of the Wood Optimization Task Force. Specifically, you have asked whether the Task Force's work, focusing on the following, violates Maine antitrust law:

1. The idea of modifying Maine's Renewable Portfolio Standard and accompanying measures to "level the playing field" between pulp and paper mills and biomass to energy plants; and,
2. A proposal to have the Maine Forest Service review mandatory wood supply reports submitted by any firm proposing to locate a new wood using facility in Maine.

Contracts, combinations and conspiracies by private parties in restraint of trade may violate Maine antitrust law. We would be concerned if businesses were discussing allocating markets, fixing prices or preventing new entrants into the markets. Please see Chapter 30 of the Attorney General's Consumer Law Guide which provides basic information on these issues.

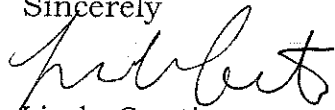
<http://www.maine.gov/tools/whatsnew/attach.php?id=27951&an=1>

The state can legislatively displace competition with regulation and exempt anticompetitive conduct from enforcement action by application of the state action doctrine. Critical to the applicability of the doctrine is that the anticompetitive activity be conducted *by the State*, with a clear articulation by the Legislature that it intends to displace competition.

The activity of the Task Force described above may involve discussions of how the Legislature might displace competition. Such planning discussions, culminating in a potential recommendation, are obviously a necessary precursor to any such Legislative action. Industry participants and private stakeholders are not prohibited from participating in such planning discussions, but should be careful not to exchange proprietary information that could facilitate pricefixing or market allocation by those private parties.

If the Task Force does ultimately wish to recommend legislation that would displace competition (e.g. price regulation, or allocating resources among industry participants), we would be happy to provide additional information about elements that should be included to avoid antitrust liability in the future.

Sincerely



Linda Conti

Assistant Attorney General

LC/sm

cc: Donald J. Mansius