

MAINE STATE LEGISLATURE

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STATE OF MAINE
AUGUSTA, MAINE

Inter-Departmental Memorandum Date July 27, 1973

To All State Departments, Boards and Commissions Dept. _____
From Jon A. Lund, Attorney General *JAL* Dept. Attorney General
Subject Attorney General as Counsel for State Government

According to the Maine Statutes, the Attorney General is legal counsel for State Government. The Attorney General represents the State and the heads of all State Departments, Agencies, Boards and Commissions in all civil actions and proceedings in which the State is a party or is interested or in which the official acts and doings of said officers are called in question.

"The Attorney General shall appear for the State, the Secretary of State, the Treasurer of State, the Bank Commissioner, the Insurance Commissioner, the heads of any state institution and the state boards and commissions in all civil actions and proceedings in which the State is a party or interested, or in which the official acts and doings of said officers are called in question, in all the courts of the State; * * * ."
5 M.R.S.A. § 191.

Only a very few State Agencies have been authorized by the Legislature to hire "outside legal counsel." But even in those instances, the Legislature has made it clear that all legal services which are required by State officers, boards and commissions in matters which relate to their official duties shall be rendered by the Attorney General or under his direction.

"All legal services required by such officers, boards and commissions in matters relating to their official duties shall be rendered by the Attorney General or under his direction. * * * ."
5 M.R.S.A. § 191.

"The Attorney General shall give his written opinion upon questions of law submitted to him by the Governor and Council, Secretary of State, Treasurer of State, Bank Commissioner, Insurance Commissioner, State Auditor or head of any other state department, or any of the state boards or commissions or by either branch of the Legislature." 5 M.R.S.A. § 195.

JUL 27 1994

8/11 *M. West - clerk for Council - Does not apply to Legislative*

In those few instances where State agencies have been authorized by the Legislature to hire "outside legal counsel," the State agency must obtain the Attorney General's approval prior to such employment of counsel. Collaterally, I interpret the above statutes as a requirement that bills for attorneys' fees presented to State agencies must be approved by this office prior to payment. It has come to my attention that "outside legal counsel" have been employed without prior approval of this office and that contracts describing legal services have not been presented to this Department for approval nor have bills for legal services been submitted here for examination and approval prior to payment.

Effective this date, before any contracts are made with private counsel by any state department, agency, board or commission, the agency head shall consult with the Attorney General to examine the reason why legal services are not to be provided by this office.

In order that there be compliance with the above statutes, please furnish me with the following information, where applicable, at your earliest convenience:

- (1) a statement that you employ "outside legal counsel" for State business;
- (2) whether the arrangement is covered by a written or an oral contract; and
- (3) a copy of the written contract or a descriptive statement of the oral agreement (i.e., name of counsel, rate of compensation, duration of the agreement, type of services performed.) It is essential that any existing oral contracts be immediately reduced to writing and submitted to this office for review and approval or disapproval.

We have notified Accounts and Control that no bills for legal services are to be paid unless approved by the Attorney General.

JAL/ec