

MAINE STATE LEGISLATURE

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October 19, 1973

William R. Adams, Commissioner

Environmental Protection

Cabanne Howard, Assistant

Attorney General

Law Enforcement Officer

NOT A RECORD OF ACTION

On February 28, you requested from the Attorney General's office an informal interpretation of a paragraph from the Department's Air Implementation Plan. The paragraph is attached. You asked:

1. Who is an authorized representative?
2. How does he or she become one?
3. What are "certain purposes"?

The answer to these questions requires some explanation of the origin of the paragraph. The second sentence of the paragraph is taken from the statutory definition of the crime of "Obstructing Justice." 17 M.R.S.A. § 2952. That section specifies:

"Whoever assaults, intimidates or in any manner willfully obstructs, intimidates or hinders any . . . employee or authorized representative of the [Department of Environmental Protection] . . . while in the lawful discharge of his official duties, whether with or without process, shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months. In offenses under this section, not of an aggravated nature, the District Court may punish by a fine of not more than \$100 or by imprisonment for not more than 90 days." (emphasis added)

The inclusion of employees or authorized representatives of the Department of Environmental Protection (originally the Environmental Improvement Commission) was made in 1971.

Please note that the word "employee," while appearing in the statute, does not appear in the Bureau's Plan; and I would suggest that its omission in the latter is probably causing most of the practical problems which you may be contemplating, since it is far more difficult to determine who is or is not an "authorized representative" of the Department than to establish whether someone is one of its employees. Viewed in this light, the "authorized representative" phrase would appear to contemplate only persons doing work for the Department on a part-time basis. As to whether all such persons are included, it could be argued that they are by implication, but it would probably be better, in situations where some unpleasantness might be anticipated, to make sure any part-time employee is "deputized" in advance by sending him a letter designating him an "authorized representative" of the Department for that particular proceeding.

As for the first sentence of the paragraph of the Air Implementation Plan in question, it would appear that it has no statutory foundation and should therefore be disregarded, if not eliminated from the Plan.

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Section 2952 does not use the phrase "law enforcement officer," nor is the section's applicability limited to any special "purposes." The employees of the Department, as well as any "authorized representatives," express or implied, that it might have, are therefore protected, no matter what they are doing, so long as whatever it is is "official" in nature. Please note that all the statute does is to give the employees the same protection as police officers; it does not confer on them any particular police powers.

CABANNE HOWARD
Assistant Attorney General

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NOT A FORMAL OPINION