

MAINE STATE LEGISLATURE

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JB yes ✓
July 9, 1974

Lt. Col. Donald E. Nichols, Chief

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Public Disclosure of Games of Chance

SYLLABUS:

The Chief of the State Police must allow licensed distributors and printers of gambling materials to inspect a list of licensed operators of games of chance. Although he may not charge a fee for preparation of the list, the Chief of the State Police is entitled to the out-of-pocket expense of reproducing copies of the list for requesting members of the public.

FACTS:

The Chief of the State Police is authorized, under 17 M.R.S.A. §332, to license certain types of organizations to operate games of chance. Under 17 M.R.S.A. §§337, 338, he is authorized to license distributors and printers of gambling materials. The State Police have prepared a list of all organizations licensed to operate games of chance. A licensed distributor has requested a copy of the list.

QUESTIONS AND ANSWERS:

1. Must the Chief of the State Police allow licensed distributors and printers to inspect a list of the organizations that have been licensed to operate games of chance? Yes.
2. If the answer to question #1 is affirmative, may the Chief of the State Police charge a fee (a) for its preparation or (b) for expenses of reproducing copies when copies are requested. (a) No. (b) Yes.

REASONS:

Although the Chief of the State Police is not required by statute to compile a list of organizations licensed to operate games of chance, if he (or his employees) prepares such a list in the course of his official duties, that list is a public record within the scope of Title I M.R.S.A. §405 and as such members of the public are entitled to inspect it during regular business hours and to make notes of its contents or photographic or photostatic copies.

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It might be argued that the exception provided for in 1 M.R.S.A. §405 (exempting from disclosure records specifically designated confidential by statute) is applicable in light of Title 25 M.R.S.A. §1631, which declares State Police Criminal and administrative records to be confidential. However, 25 M.R.S.A. §1631 was not intended to exempt records such as the subject list from the Freedom of Access Laws. I believe that 25 M.R.S.A. §1631 was intended to withhold from the public only those records of the State Police the disclosure of which might jeopardize the investigation or prosecution of pending criminal cases or be otherwise detrimental to the interests of state. Disclosure of the subject list would in no way jeopardize the state interests sought to be protected by 25 M.R.S.A. §1631. Moreover, there is a compelling reason for public disclosure of the information contained within the list (i.e. identity of licensed operators of games of chance); members of the public, as well as distributors and printers of gambling materials, must know what organizations are licensed to operate games of chance because it is unlawful to participate in an unlicensed game or to sell gambling materials to unlicensed organizations. In light of these considerations, and in light of the strong public policy favoring disclosure, I conclude that the 1 M.R.S.A. §405 exception is inapplicable.

It is the opinion of this office, therefore, that the Chief of the State Police must allow licensed distributors or printers of gambling materials and any other member of the public to inspect the list.

Absent statutory authorization, a fee may not be charged for expenses incurred in the preparation of the list. If the Chief of the State Police (or his employees) deems it necessary to compile the list, pursuant to 17 M.R.S.A. §344 expenses incurred in the preparation of the list must be paid from fees collected under 17 M.R.S.A. §339.

Although the Chief of the State Police is under no obligation to furnish copies of the list, by clear implication from 1 M.R.S.A. §405 he is empowered to furnish copies to members of the public who request to inspect the list. When the Chief of the State Police performs this service by reproducing copies of the list, he is entitled to the out-of-pocket expense incurred in performing the service.

JON A. LUND
Attorney General