

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of  
the Maine Attorney General as transferred to  
the Maine State Law and Legislative Reference  
Library on January 19, 2022**

# STATE OF MAINE

Inter-Departmental Memorandum Date August 12, 1974

To Marshall T. Wiebe, Coordinator

Dept. ~~Keep~~ Maine Scenic Committee

From Lee M. Schepps, Assistant

Dept. ~~Attorney~~ General

Subject Television Advertising

This is in response to your memo of July 24, 1974, concerning proposed television commercials on billboards and similar "visual pollution." You asked for general guidance on the subject of libel and because we have not viewed your proposed ads, we cannot express any firm or specific opinion.

No general rule can be laid down defining absolutely what words are, and what words are not, libelous or defamatory, and each set of words or pictures must be evaluated on its own. Language or pictures which tend to expose another to hatred, shame, obloquy, contempt, ridicule, aversion, ostracism, degradation or disgrace are generally considered defamatory. If your proposed television commercials focus upon the public problem and not upon individuals, if they deal fairly with the broad scope of "visual pollution" and do not single out any specific companies or persons for criticism, the chances that the commercials would be deemed defamatory or libelous are minimized, even though the name of the billboard company or the name of the advertised product or business enterprise were discernible on the television screen.

We would point out that even if the words or pictures were defamatory, per se, there has been a defense to a libel action available to those who defame other persons in the good faith exercise of their First Amendment rights to freedom of speech and the press. This defense, or exception to the rule prohibiting defamatory statements, permitted fair comment or criticism concerned essentially with political or public issues of general public concern. The scope of this defense was narrowed considerably by the United States Supreme Court in June, 1974, in a case styled Gertz v. Welch. Based upon our reading of that decision, we are not prepared to say that the "fair comment or criticism" defense to a libel action is not still somewhat viable and that it would not protect a publisher of your proposed television commercials. While the rule laid down in Gertz was broad, the facts involved a vicious attack upon a specific individual.

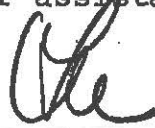
Suffice it to say, we suggest caution and especially a reasonable effort to be fair in avoiding the singling out of specific advertisers for criticism.

We would point out that, in any event, the Keep Maine Scenic Committee is an agency of the State of Maine and is therefore immune from liability for libel under the doctrine of sovereign immunity. Moreover, public officials acting in good faith and with reasonable care

**AN INFORMAL OPINION**

are likewise immune from personal liability. Our views on the subject of potential liability for libel, therefore, are for your information though they may have some applicability to the film producer or television stations involved in the program.

Let us know if we can be of further assistance. Kind regards.



---

LEE M. SCHEPPS  
Assistant Attorney General

LMS:mfe

AN INFORMAL OPINION