

# MAINE STATE LEGISLATURE

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August 21, 1974

Otto W. Siebert, State Budget Officer

Budget

Charles R. Larouche, Assistant

Attorney General

Public View of Budget Estimates

This replies to your memo of July 2, 1974, concerning this subject.

I understand your question to be whether or not the budget estimates prepared by the departments and agencies of this State and submitted to the State Budget Officer pursuant to 5 M.R.S.A. § 1665 are "public records" within the meaning of that term as used in 1 M.R.S.A. § 405. The answer to that question is affirmative.

The first paragraph of 5 M.R.S.A. § 1665 provides:

"On or before September 1st of the even-numbered years, all departments and other agencies of the State Government and corporations and associations receiving or desiring to receive state funds under the provisions of law shall prepare, in the manner prescribed by and on blanks furnished them by the State Budget Officer, and submit to said officer estimates of their expenditure and appropriation requirements for each fiscal year of the ensuing biennium contrasted with the corresponding figures of the last completed fiscal year and the estimated figures for the current fiscal year. The expenditure estimates shall be classified to set forth the data by funds, organization units, character and objects of expenditure. The organization units may be sub-classified by functions and activities, or in any other manner, at the discretion of the State Budget Officer."

1 M.R.S.A. § 405 provides:

"Every citizen of this State shall, during the regular business or meeting hours of all such bodies or agencies, and on the regular business premises of all such bodies or agencies, have the right to inspect all public records, including any minutes of meetings of such bodies or agencies as are required by law, and to make memoranda, abstracts or photographic or photostatic copies of the records or minutes so inspected, except as otherwise specifically provided by statute."

Otto W. Siebert, State Budget Officer  
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76 C.J.S., Records, § 1, at page 112, defines public records as follows:

"The elements essential to constitute a public record are, namely, that it be a written memorial, that it be made by a public officer, and that the officer be authorized by law to make it; but the authority of the officer need not be derived from express statutory enactment, and if authorized to make the record, it is not necessary that he should be required to do so."

It appears from the foregoing that a budget estimate submitted to the State Budget Officer pursuant to 5 M.R.S.A. § 1665 is a public record; it is a written memorial by a public officer which he is not only authorized, but is required, to make. It is a written memorial of that official's estimate of expenditures and appropriation requirements for his agency and other information relevant thereto.

It also appears that 5 M.R.S.A. § 1665 does not "otherwise specifically provide. . .", i.e., it does not declare that the right of public view of public records provided in 1 M.R.S.A. § 405 shall not be applicable to budget estimates submitted to the State Budget Officer. Accordingly, the citizen is entitled to view such records.

It must also be apparent that this opinion invalidates the prior opinion of this Office on this subject (dated October 12, 1962). All of the statutory provisions discussed hereinabove were in existence and identical in all pertinent respects at the time that prior opinion was issued. Inexplicably, the prior opinion makes no reference to the then existent predecessor of 1 M.R.S.A. § 405. In any event, the opinion of this Office is as herein expressed.

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Assistant Attorney General

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