

# MAINE STATE LEGISLATURE

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November 26 / 1974

Governor Kenneth M. Curtis

Secretary

Jon A. Lund, Attorney General

Attorney General

Additional Issues to be resolved regarding the State Employee Labor Relations Act and the Office of State Employee Relations

This replies to your memorandum dated August 2, 1974, concerning the subject, enclosing a letter dated July 11, 1974, from Mr. Carnevale, and referring to a copy of OSER-3. I have reviewed all of that material, and I submit the following in response to the questions therein presented.

I understand that the Personnel Department has prepared a list of permanent State employees showing: name, job title, agency and place of employment, salary and home address. I further understand that this list has been prepared from the various records in the Personnel Department and other agencies of the State and that such list was compiled for the purpose of implementing the new State Employee Labor Relations Act, Chapter 9-B, Title 26.

I understand your first question to be:

Does the above-described State employee list constitute a public record?

Answer: Yes.

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."

There does not appear to be any statutory provision which declares that the above-described State employee list, nor any of the information contained therein, is to be confidential. There does not appear to be any statutory provision which declares that the records of the Personnel Department containing such information nor that the records of any other State agency containing any such information, are to be confidential. Hence, the exception provided in 1 M.R.S.A. § 405 does not appear to be applicable.

Governor Kenneth M. Curtis

Page 2

November 26 , 1974

Not all information in the files of a State agency are public records. 76 C.J.S., Records, § 1, at page 112 declares:

"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."

That authority and prior opinions of this Office indicate that not all memoranda in the files of an Agency are "public records" and that correspondence from one in his private capacity to an Agency would not generally be a "public record." See 1961-1962 Attorney General's Report, p. 82, 83; 1943-1944 Attorney General's Report, p. 110-112; Opinion of Deputy Attorney General Fogg to Mr. Royden V. Brown, dated August 6, 1940; Opinion of Deputy Attorney General West to Mr. John P. Harriman, dated May 4, 1962; and People v. Harnett, 226 N.Y.S. 330.

This Office has recently issued opinions that a local tax assessor's property record cards are public records. See memorandum of the Attorney General to the State Tax Assessor, dated June 11, 1974. Likewise, documents produced by the Health Facilities Planning and Construction Service. See memorandum from this Office to the Commissioner of Health and Welfare, dated February 14, 1974. We also have advised that the Maine State Retirement System membership and retirement payroll data required to be made by that System are public records. See memorandum of this Office to Executive Director, Retirement System, dated February 26, 1974. Likewise, budget estimates. See memorandum of this Office to State Budget Officer, dated August 21, 1974. We have also advised that the Chief of State Police must allow the public to inspect his list of licensed operators of games of chance.

The information described as contained in the State employee list seems to fit within the general definition of a "public record."

I understand your second question to be:

Who is eligible to see the above-described State employee list?

Answer: "Every citizen of this State. . . ." 1 M.R.S.A. § 405.

Your third question seems to be:

Does any State Official have the power to deny any citizen of this State the right to view public records during regular business hours on the regular business premises of the State agency?

Governor Kenneth M. Curtis  
Page 3  
November 26 , 1974

Answer: No. See 1 M.R.S.A. § 405, above-quoted.

Your fourth question appears to be:

Is it lawful to limit availability of the list of permanent State employees to employee representation contenders who prove to the PERB that they represent 30% of the regular employees in a proposed unit?

Answer: No. If such a list is prepared by the State Employer, it is a public record and viewable by every citizen of this State. If such a list is to be supplied to any employee representation contender, it must be supplied to all. The proposed limitation upon supplying this list would favor the strong over the weak and would constitute unlawful discrimination in violation of 26 M.R.S.A. § 979-B.

I believe that the foregoing response either directly and fully answers all of the questions presented in your memorandum of August 2, 1974, or that it renders the remainder moot. However, if, after you have considered the contents hereof, you desire further amplification, please advise me.

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JON A. LUND  
Attorney General

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