

# MAINE STATE LEGISLATURE

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January 28, 1976

Honorable Howard Trotsky  
Senate Chambers  
State House  
Augusta, Maine

Dear Senator Trotsky:

This is a response to your oral request of today asking our opinion as to when a legislative committee can go into executive session under the provisions of the Maine Freedom of Access Law, 1 M.R.S.A. §§ 401, et seq. That law is quite clear that its provisions apply to legislative committees. Section 402, defining public proceedings, specifically mentions legislative committees. Further, the exemption of legislative committees from the provisions relating to executive sessions was specifically deleted by section 4 of P.L. 1975, c. 483.

Executive sessions of legislative committees may be held only under the following conditions:

First, an executive session may be called only by a vote of at least 3/5 of the members present and voting as provided in § 404. A quick review of the statute books may cause some confusion on this point as the provisions as the pocket part of the statute book present two initial paragraphs of § 404, one requiring a 3/5 vote and one requiring a majority vote. The 3/5 vote requirement prevails for the reasons set forth in our opinion to Representative Tarr on the subject dated December 18, 1975, a copy of which is enclosed.

Second, any motion to go into executive session must indicate the nature of business to be conducted at the executive session, and no other business, except that addressed in the motion, may be considered in that particular executive session.

Third, executive sessions may only be held on the following matters:

1. Discussion or consideration of the employment appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining or resignation of public officers, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against such persons; provided that any person charged, investigated or otherwise under discussion shall be permitted to be present at such executive session if he or she so desires;
2. Discussion or consideration of the dismissal of any public official or employee;
3. Discussion or consideration of the condition, acquisition or the use of real or personal property or interests therein or disposition of publicly held property if premature disclosure of such information would prejudice the competitive or bargaining position of the body or agency;
4. Negotiations with employee representatives under collective bargaining laws;
5. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's counsel to his or her client pursuant to the code of professional responsibility clearly conflicts with this subchapter or where premature general public knowledge would clearly place the state, municipality or other public agency or person at a substantial disadvantage;
6. Deliberations by a body or agency acting in an adjudicative or quasi-judicial capacity. The hearing of evidence is not to be construed as deliberations.
7. Discussion of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute.

The above purposes for which executive sessions may be held are taken directly from the statute. Without knowing the facts of the situation, this office is not in a position to advise the Committee as to what specific matters could be considered in executive session.

Sincerely,

JOSEPH E. BRENNAN  
Attorney General

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