

MAINE STATE LEGISLATURE

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January 29, 1976

Honorable Charles A. Jacobs
Member, Executive Council
State House
Augusta, Maine

Dear Councillor Jacobs:

This will respond to your letter dated January 21, 1976, requesting my legal opinion whether the Executive Council may vote in executive session on whether to grant or deny petitions for pardons or commutations. For the reasons which follow, it is my opinion that any final vote must be taken in public session.

Under the Maine Freedom of Access Law, 1 M.R.S.A. §§ 401, et seq., the Legislature has declared its intent that public proceedings and public deliberations be conducted openly. 1 M.R.S.A. § 401. The term "public proceeding" is defined in § 402 as follows:

". . .the transactions of any functions affecting any or all citizens of the State by any administrative or legislative body of the State. . . with which functions it is charged under any statute or under any rule or regulation of such administrative or legislative body or agency."

In our opinion pardon or commutation proceedings are public proceedings within the meaning of the foregoing statutory provision. The pardon and commutation functions of the Governor and Executive Council stem from Article V, Pt. 1, §11 of the Maine Constitution and the procedures to be followed in

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such matters are expressly set forth by statute, 15 M.R.S.A. §§ 2161, et seq. It is clear that discharging these responsibilities affects citizens of the State, and that the Governor and Executive Council are acting as an administrative body of the State within the meaning of § 402. An Administrative agency has been defined as "a governmental authority, other than a court and other than a legislative body, which affects the rights of private parties through either adjudication or rule making," and may include the President or a governor. Davis, Administration Law Treatise, § 1.01.

While it is true that the Freedom of Access Law expressly authorizes certain matters to be deliberated or considered in executive session, [deliberations by an agency acting in an adjudicative or quasi-judicial capacity may be conducted in executive session, § 404(5)] none of these exceptions applies to final votes on pardon or commutation petitions. Section 404 expressly provides

" . . . that no ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action shall be finally approved at such executive sessions. . . "

We understand that there is some concern on the part of the Governor and Council that taking final votes in public session and maintaining a public record of such votes on pardon or commutation applications would raise a possible security problem. The Legislature could create an additional exception to the present law to deal with this problem. However, under existing law, final votes on pardon or commutation petitions may not be taken in executive session.

Very truly yours,

JOSEPH E. BRENNAN
Attorney General

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