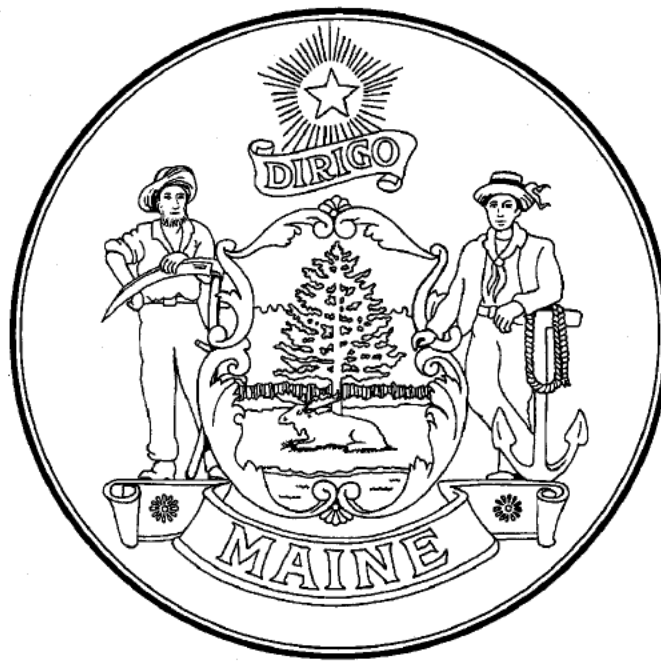


MAINE STATE LEGISLATURE

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State House Identification tags
5 M.R.S.A. § 1742-A

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June 28, 1976

Honorable John L. Martin
Speaker of the House
Box 276
Eagle Lake, Maine 04739

Honorable Richard Spencer
R.F.D. #1
Sebago Lake, Maine 04075

Gentlemen:

This responds to your request of June 16, 1976, for an opinion on the following question:

Does the Commissioner of Finance and Administration have the authority under the Constitution and Statutes of the State of Maine to require certain categories of persons to wear visible identification badges as a precondition of entry into all buildings in the State House Complex? Specifically, can these requirements be applied to: State employees, the press corps, the State Librarian, constitutional officers, employees of constitutional officers, Legislators and Legislative staff? The answers vary according to the appropriate categories of persons as discussed below.

Generally, the Department of Finance and Administration through the Director of the Bureau of Public Improvements has been delegated authority by the Legislature for promulgation and enforcement of regulations regarding security of the Capitol buildings and grounds. Thus, 5 M.R.S.A. § 1742-A provides:

"The Director of Public Improvements is authorized and empowered to promulgate regulations, subject to the approval of the Governor and the Commissioner of Finance and Administration, governing the use, occupancy and security of all parks, grounds, buildings and appurtenances maintained by the State at the seat of government. Said regulations shall become

effective upon deposit of a copy thereof with the Secretary of State, who shall forward a copy thereof attested under the Great Seal of the State to the District Court for Southern Kennebec.

"Sections 1773, 1774, 1775 and 1776, as they apply to the enforcement of regulations made under section 1772, shall also apply to the enforcement of any regulations made pursuant to this section."

This gives the Department of Finance and Administration authority to publish reasonable regulations to assure proper security in the State Capitol Complex, these regulations being subject, of course, to the Attorney General's approval as to form and legality, 5 M.R.S.A. § 2351-4.*

* We noted that the cards employees are required to execute include a space for social security numbers. Disclosure of social security numbers can be required only under certain limited conditions, as provided in the Federal Privacy Act, P.L. 93-579, § 7. The relevant provisions follow:

(a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

"(2) the provisions of paragraph (1) of this subsection shall not apply with respect to -

(A) any disclosure which is required by Federal statute, or

(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it."

While there may be differences as to what represents a reasonable regulation of security, this matter would be properly determined, in the first instance, by the Commissioner of Finance and Administration and the Director of the Bureau of Public Improvements and subject to reversal on legal grounds only if the regulation in question was arbitrary or clearly unrelated to the statutory purpose to be served. In this instance, while this office may not agree with the proposed regulations as a policy matter, we do not believe that they would be beyond the scope of reasonable regulation within the discretion of the Department of Finance and Administration.*

Further applying the regulation to State employees but not to visitors to the Capitol Complex would also appear to be a reasonable distinction such that no question of equal protection would be raised. The bases for the distinction would be the occasional nature of individual citizen visitors to the Capitol, the goal of encouraging citizen access and the goal of being able to distinguish State employees from occasional visitors.

State Employees:

The proposed regulation may be applied to classified State employees.

Press Corps:

The press corps is guaranteed access to the Legislature by the provisions of 3 M.R.S.A. § 341. However, this access may be limited by reasonable terms and conditions which do not prohibit or substantially impair access of the press to the government. The Bureau of Public Improvements already regulates the press by controlling their facilities. This regulation, requiring visible identification badges, could also be reasonably applied to the press as it would not impair their basic functions.

* We would emphasize that to date these regulations have only been discussed in the abstract, they have yet to be published. It is our understanding, based on discussions with officials of the Department of Finance and Administration, that what is contemplated is a regulation requiring State employees to wear visible identification badges. Similar badges would not be required of visitors whose access to the State Capitol Complex would apparently continue as it exists today, though perhaps under closer scrutiny under security personnel who would distinguish employees from visitors by the identification badges.

Constitutional Officers and Legislators:

The Maine Constitution makes the Legislature separate and distinct from the Executive. Likewise the Constitution provides for three constitutional officers separate and distinct from the Executive Department - the Secretary of State, the State Treasurer and the Attorney General. Space is provided for the Legislature and these officers in the Capitol Complex. The Bureau of Public Improvements can and does enforce reasonable regulations regarding use of this space. However, should a Legislator or a constitutional officer choose not to comply with the badge regulation of the Bureau of Public Improvements, that Legislator or constitutional officer (or the Governor), as a separate and distinct constitutional entity from the Executive Department, could not be denied access to the Legislature or his office as a result of such noncompliance. Further, a constitutional officer or Legislator could not be impeded in the performance of any of his duties by noncompliance with such regulation. Thus, a Legislator or constitutional officer or the Governor would continue to have access to those areas of the Capitol Complex which are necessary for the performance of his particular duties, even when not wearing the required identification badge.

Employees of Constitutional Officers:

As to employees of constitutional officers, it is reasonable to assume that, like other employees, they would be required to comply with reasonable security regulations. It will be noted that currently, for example, employees of constitutional officers must comply with regulations such as those limiting parking. The law authorizing the security regulations in question was made, by its own terms, directly analogous to the general parking regulations, 5 M.R.S.A. § 1772, et seq. Further, the regulations themselves would in no way interfere with the duty of the employees of constitutional officers to fulfill the functions assigned by the constitutional officers. As the Legislature has delegated to the Department of Finance and Administration authority for publishing regulations relating to security of the Capitol Complex, it is reasonable to assume that the Legislature intended that such security regulations could be applied to employees of constitutional officers who work in the Capitol Complex.

Legislative Employees and State Law Librarian:

The above rationale would allow the badge regulation to apply to legislative employees and the State Law Librarian, provided the regulation in no way impedes their ability to perform their assigned duties. The Legislature has delegated authority for security regulation to the Department of Finance and Administration and thus reasonable security regulations can apply to legislative employees in those portions of the Capitol Complex subject to Finance and Administration jurisdiction.

Hon. John L. Martin
Hon. Richard Spencer
Page 5
June 25, 1976

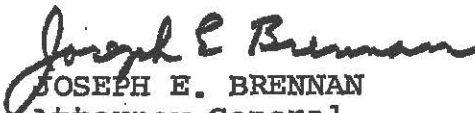
However, the Legislature has reserved jurisdiction over certain facilities in the Capitol Complex to itself, acting through the Legislative Council, 3 M.R.S.A. § 162-12. Within such legislatively controlled facilities, such regulations as the Legislative Council chooses to adopt would apply. However, Finance and Administration regulations would continue to apply in other facilities in the Capitol Complex.

Conclusion:

In conclusion, the badge regulations may be applied to State employees, employees of constitutional officers, legislative employees and the State Law Librarian. The badge regulation may not be enforced against Legislators and constitutional officers, including the Governor, should they elect not to comply with it. The badge regulation may also not be enforced, unless the Legislative Council so elects, in those rooms and facilities subject to its direct control.

I wish to reemphasize that this opinion should not be construed in any way to imply that this office supports or agrees with the badge regulation as a policy matter.

Sincerely,


JOSEPH E. BRENNAN
Attorney General

JEB/ec