

MAINE STATE LEGISLATURE

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1 MRJA 402-2

July 12, 1976

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

Dear Mr. Speaker:

This responds to your request for an opinion dated June 28, 1976. By that request you ask whether the meetings of the Governor's Tax Policy Committee are public proceedings which must be held in public pursuant to the provisions of the Freedom of Access Law.

The meetings of the Governor's Tax Policy Committee are not "public proceedings" within the meaning of the Freedom of Access Law.

Discussion:

It is our understanding that the Governor's Tax Policy Committee is a group of private citizens whom the Governor has requested to meet and prepare recommendations for presentation to the Governor regarding tax policies. The Tax Policy Committee is created by Executive Order. However, it has no status under any statute of the State of Maine and is solely a group of persons advising the Governor. Its members receive no compensation or expense reimbursement from the State. Some public officials may participate in the deliberations of the Tax Policy Committee. Any recommendations of the Committee would be published and subjected to public comment before the Governor would consider them as part of a proposed legislative program. Any recommendations finally accepted by the Governor would again be the subject of public scrutiny and comment as part of the legislative process on the proposed program.

The question posed relates to matters which may arise in the future. For that reason, this opinion has been developed by reference to the provisions of the Freedom of Access Law which will be effective July 29, 1976, that is, the provisions adopted by P.L. 1975, c. 758. However, the result of this opinion would be no different if it were an interpretation of the current Freedom of Access Law, 1 M.R.S.A. Chapter 13.

Under the Freedom of Access Law, the term "public proceedings" is defined as: "The transactions of any functions affecting any or all citizens of the State by . . . any board or commission of any state agency* or authority, the Board of Trustees of the University of Maine and the Board of Trustees of the Maine Maritime Academy." 1 M.R.S.A. § 402-2-B. Beyond this definition the term "public proceedings" is also intended to apply to legislative activities and activities of counties, municipalities and other subdivisions of the State. (§ 402-2-A and C). These other two provisions clearly do not apply here. Thus, the question is whether the Governor's Tax Policy Committee's activities are public proceedings under subparagraph B.

The Governor's Tax Policy Committee has the sole function of providing advice to the Governor on matters of tax policy, which advice the Governor may or may not use in developing his own legislative proposals. Beyond what influence it may have with the Governor, the Governor's Tax Policy Committee has no authority granted by law on any tax matter.

Thus, with these facts, there must be an examination as to whether the Governor's Tax Policy Committee constitutes a State agency. A review of the precedents indicates that, as a general matter, the definition of State agency is not exact. However, a number of criteria can be applied in determining whether an agency is a State agency for the purposes of this and other laws. These criteria would include:

* The term "State agency" is not defined in the Freedom of Access Law; however, the Administrative Code, 5 M.R.S.A. § 2301-1, enumerates agencies covered by that code and adds that all such enumerated bodies are "authorized by law to make rules or to adjudicate contested cases." Such qualifications would appear to provide some guidance for interpretation of the Freedom of Access Law.

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- the origin of the body: statute, executive order, regulation
- the extent of the powers of the body: Do they have power to take action or are they purely advisory?
- the source of funding, if any
- the degree of autonomy from other officials and agencies
- the time frame of their mandate: open ended or time limited
- the composition and method of selection of membership
- compensation, if any, to the membership.

Based on review of these criteria and the recognition that the Governor's Tax Policy Committee is composed of private officials giving private advice without statutory authorization or any other mandatory authority, it is concluded that the Committee is not a "board or commission of any State agency or authority" for purposes of the Freedom of Access Law.

Because the Committee is not such a "board or commission of any state agency or authority," its activities are not "public proceedings" within the restricted definition of public proceedings adopted by I M.R.S.A. § 402-2. As its activities are not "public proceedings" under the Freedom of Access Law, its meetings need not be open to the public under I M.R.S.A. § 403 which requires that only public proceedings be open to the public.

Sincerely,

JOSEPH E. BRENNAN
Attorney General

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