

# MAINE STATE LEGISLATURE

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Legislation  
STATE OF MAINE

Inter-Departmental Memorandum Date October 18, 1976

To David Silsby, Director

Dept. Legislative Research

From Donald G. Alexander, Deputy

Dept. Attorney General

Subject Office Position Concerning Subpoena of Legislative Files or Staff

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This responds to your memorandum of September 9, 1976, relating to questions regarding subpoena of legislative files or staff. The Legislature does not have a blanket exemption from subpoenas and the Freedom of Access Law does not provide those exemptions even to those documents which it addresses. Briefly, the current status of subpoena power regarding the Legislature is as follows:

1. Persons do not have a right to subpoena legislative documents solely for the purpose of looking at those documents, as those documents are an exception to the public records provisions of the Freedom of Access Law, 1 M.R.S.A. § 402-3-C, and thus are entitled to be retained as confidential from persons who simply wish to examine the documents. However, it must be emphasized that it is conceivable that the documents could be subject to subpoena in cases where the document was needed to another purpose than simply right to know (for example, if the documents in question were a report discussing an accident which later became the subject of litigation). In such cases, the document might be subject to subpoena unless they were privileged or otherwise exempted from discovery under the normal rules of evidence.

Accordingly, legislative documents are not absolutely privileged. Persons cannot use subpoenas simply as a device to gain access to otherwise confidential documents. The above-cited provisions of the Freedom of Access Law prevent that. However, there are other purposes for which documents may be subpoenaed. To provide a blanket protection for legislative files additional legislation would be necessary if absolute protection from subpoena is what is desired. Further, it must be emphasized that the adoption of State legislation would not necessarily guarantee absolute protection from subpoena in federal courts for State documents.

2. As to legislative staff, I assume, first of all, that your question relating to legislative staff is in reality a question which relates to legislative staff in performing their public and official duties. As private citizens, legislative staff may be subpoenaed in private matters like any other person.

In performing their public duties, legislative staff may be subpoenaed under certain factual situations. It is not possible to give an opinion on these situations without having a specific factual situation before us. In this instance the question of

immunity from subpoena is closely related to the question of privilege. In situations where legislative staff might be subject to subpoena, the information which could be required of them in courts or in depositions is severely limited because the communications which might be sought from legislative staff would be privileged. Generally, a wide privilege applies to legislative deliberations. [Cf. Maine Const. Art. IV, Part 3, § 8; see also on general privileged deliberations issue Morgan v. United States, 324 U.S. 1 (1938); United States v. Morgan, 313 U.S. 407 (1940); Zion First National Bank v. Taylor, 390 P.2d 854 (Utah, 1964)]. Thus, the reasons for the Legislature taking an action, as opposed to the actions itself, are privileged and may not be subject to compelled testimony or forced disclosure by other means.

However, as with legislative documents, there is no blanket exemption from subpoena for legislative staff in performing their public functions. If such an exemption from subpoena is desired, it should be sought by legislation. Again, as with documents, such State legislation would not necessarily exempt legislative staff from subpoenas from federal court.

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DONALD G. ALEXANDER  
Deputy Attorney General

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