

MAINE STATE LEGISLATURE

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JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

November 23, 1976

Honorable Theodore S. Curtis, Jr.
State Senator
2 Mill Street
Orono, Maine 04473

Dear Senator Curtis:

This responds to your letter of September 23, 1976, in which you pose two questions regarding application of the Freedom of Access Law to the University of Maine. Specifically, your questions were:

- "1. Whether meetings of committees and sub-committees of the Board of Trustees of the University of Maine and the Maine Maritime Academy are 'public proceedings' under the definition of 1 M.R.S.A. § 402(2)(B).
- "2. If the answer to the first question is 'Yes', then would all meetings of the committees and subcommittees of the Board of Trustees of the University of Maine and the Maine Maritime Academy be open to the public, unless they are in 'executive sessions,' as provided under 1 M.R.S.A. § 405?"

We answer both question in the affirmative.

Discussion:

The declaration of purposes of the Freedom of Access Law, 1 M.R.S.A. § 401, indicates a general purpose to promote openness in government. Then the section notes:

"This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent."

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Thus the clear intent of the law is to establish open government and, where close questions exist, to interpret the law in favor of such openness.

As to the first question, the definition of public proceedings, 1 M.R.S.A. § 402-2 specifically applies to the Board of Trustees of the University of Maine and the Trustees of the Maine Maritime Academy. The question then becomes whether meetings of committees and subcommittees of those boards, carrying out the business of those boards, are similarly public proceedings. Considering the liberal construction mandate of the law, it must be interpreted to include within its coverage such committee and subcommittee meetings of the trustees. The introduction to the public proceedings definition notes that "public proceedings" as used in this subchapter shall mean "the transactions of any functions affecting any or all citizens of the State by any of the following." An officially constituted committee or subcommittee of a board of trustees would be carrying on the business of the board of trustees in its meeting. As it would be carrying on the business of the trustees, its deliberations would be subject to the same rules as the deliberations of the board of trustees themselves. A contrary interpretation could permit the purposes of the law to be avoided by delegation of significant amounts of the public business to such committees or subcommittees, with only ratification of the actual decision-making being presented to the boards of trustees for final approval. Such an intent to allow avoidance of the law by delegation of responsibility to committees and subcommittees cannot be construed from the legislation, particularly in light of the liberal interpretation rule. Rather, it must be assumed that committees and subcommittees of boards of trustees, as official groups acting under authority of the board of trustees, must be subject to the same rules of freedom of access as the board of trustees themselves.

This is not to say that every time members of the board of trustees meet it is by its nature a public proceeding. Rather, it is to say that where there are officially designated committees or subcommittees, and those committees meet for the specific purpose of conducting business of the board of trustees whether taking action by delegation from the board of trustees or preparing matters for recommendation to the board of trustees, such meetings are "public proceedings" under § 402.

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As the actions of such committees and subcommittees are public proceedings, they may only hold executive sessions in accordance with and under the limits of the provisions of 1 M.R.S.A. § 405 relating to executive sessions of governmental bodies.

Parenthetically, it should be noted that while meetings of committees and subcommittees of boards of trustees are considered public proceedings, some of the papers prepared in connection with the business of such subcommittees are specifically excluded from the term of "public records" by 1 M.R.S.A. § 402-3-E and thus need not be disclosed. At any time when such documents are to be discussed, the committee or subcommittee in question may appropriately call an executive session as permitted by the provisions of 1 M.R.S.A. § 405-6-F which specifically permit executive sessions for discussion of records which are exempt from access by the general public. Clearly, this interpretation may, in actual circumstances, lead to conditions where meetings of committees or subcommittees of the trustees are called and are of necessity public but then may be conducted almost entirely in executive session because they involve discussion of papers which are exempt from public access. But merely because § 402-3 protects certain records of the subcommittees, it does not therefore follow that all business transacted by such subcommittees is ipso facto not a public proceeding. It may well be that other public business may be transacted wholly unrelated to such records and otherwise not excepted under § 405-6. In such cases the meeting must be conducted in public.

It may be appropriate for the Legislature to clarify these matters in the next session to avoid any confusion regarding the rights of public access to the business of committees and subcommittees of the University of Maine and the Maine Maritime Academy.

Sincerely,

DONALD G. ALEXANDER
Deputy Attorney General

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