

MAINE STATE LEGISLATURE

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1 M.R.S.A. § 402-2

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

May 17, 1977

Honorable John L. Martin
Speaker of the House

Dear Mr. Speaker:

This responds to your request for an opinion dated May 12, 1977, on the question of whether a proposed Joint Select Committee on State Policy for the Preservation, Development and Utilization of Historical and Cultural Resources, which Joint Select Committee is proposed to be established by House Order, is subject to the public meeting provisions of the Freedom of Access Law, 1 M.R.S.A. § 401 et seq. You further request advice, if the committee is subject to the Freedom of Access Law, as to when meetings of the committee may be held in executive session.

We would advise that the meetings of the Committee would be subject to the provisions of the Freedom of Access Law. We provide this advice because the meetings of the commission would be public proceedings as defined in 1 M.R.S.A. § 402-2. That section defines public proceedings to include transactions by the Legislature of Maine and its committees and sub-committees and any board or commission of any state agency or authority. The committee proposed in the draft order attached to your opinion request would include both members of the Legislature, members of the public and members of selected organizations. As such, the group is not a legislative committee in the technical sense. However, the group is characterized as a "joint select committee." Further, the group has characteristics of a legislative committee in its mandate to propose legislation. As such it appears to be an advisory committee to the legislature.

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In this connection we would note that by a previous opinion to you dated July 12, 1976, we had determined that an advisory commission created by the Governor pursuant to executive order was not subject to the public proceedings provisions of the Right to Know Law. A copy of that opinion is attached. As will be noted, there are critical differences between the advisory committee proposed to be created by the Joint Order and the Governor's advisory committee addressed in the previous opinion. First, the committee in this case would be created by a specific legislative act. Second, the committee has a specific legislative mandate to produce a certain legislatively related result by a certain date. Third, the legislative action creating the committee specifies that the committee members are to receive reimbursement for expenses. Thus, the proposed Joint Select Committee appears to have sufficient attributes of a public (in this case a legislative) body for its proceedings to be deemed public proceedings pursuant to 1 M.R.S.A. §402-2. This conclusion, regarding the openness of committee meetings, is mandated by the functions it is to perform and the general rule of construction applied to the Freedom of Access Law that:

"This sub-chapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent." 1 M.R.S.A. § 401.

As the meetings of the proposed Joint Select Committee are subject to the provisions of the Freedom of Access Law, that Committee may only hold executive sessions in accordance with the Freedom of Access Law. 1 M.R.S.A. § 405. Section 405 permits executive sessions only upon a vote of 3/5 of the membership and then only for certain limited purposes including:

1. Discussion of employment related matters or investigation or hearing of charges against specific persons, subject to certain conditions;
2. Discussions of property acquisitions during negotiations to acquire property;

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3. Collective bargaining negotiations;

4. Consultations with an attorney regarding pending or contemplated litigation or other matters where the Code of Professional Responsibility requires confidentiality;

5. Discussion of information contained in records where the records are made confidential by statute.*

I hope this information is helpful. If you need any other information we will try to provide it.

Sincerely,

DONALD G. ALEXANDER
Deputy Attorney General

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*The listed exceptions do not include all those listed in the Statute, but only those pertinent to the proposed committee.