

# MAINE STATE LEGISLATURE

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*Legislature! Access To Closed property*

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AUGUSTA, MAINE 04333

September 16, 1977

Honorable Peter W. Danton  
7 Beach Street  
Saco, Maine 04072

Dear Senator Danton:

This responds to your request for advice regarding the question of whether and under what circumstances a Legislator may have a right of access to state properties which are not generally open to the public.

The general nature of the question makes a response difficult, since each particular situation would have to be examined on its own facts.

We assume that the right of access to which reference is made in the question would be access for the purpose of investigating state buildings, including uses of state property, to determine if expenditures are being made properly and if revisions in programs or changes in capital facilities are necessary or appropriate. Such investigations would be pursuant to the inherent investigatory powers of the Legislature, which have been recognized in Maine as well as nearly every other jurisdiction in the United States. Maine State Sugar Industries, Inc. v. Maine Industrial Building Authority, 264 A.2d 1 (Me., 1970), citing as authority McGrain v. Daugherty, 273 U.S. 135 (1927) and Watkins v. United States, 354 U.S. 178 (1957); see also Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539 (1963). The United States Supreme Court cases just cited are unanimous in holding that although there is no express constitutional authorization for legislative investigations, the power to secure needed information by means of investigations has been considered a historic and inherent attribute of the power to legislate.

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Although the inherent legislative investigatory power is quite broad, it is not without limits. Gibson v. Florida Legislative Investigation Committee, supra. "The right of inquiry and investigation may be exercised by it [the Legislature] as a body of the whole legislature, or the Legislature may delegate its investigative powers to a Committee of less than the whole of the Legislature." A S P Incorporated v. Capital Bank and Trust Company, 174 S.2d 809 (La., 1965). While this investigative authority is an inherent one of the Legislature as a body, it does not appear to be an inherent power of any individual legislator acting on his own. Therefore, legislators who are not acting pursuant to a specific investigation or other act of the Legislature as a whole, or an investigation of a legislative committee, have no greater legal right of access to State property than any other persons.

We recognize that as a practical matter legislators may be able to contact program administrators and gain access to facilities in places where the facilities would not be available to the general public. However, such permission granting access is a question of policy, not of law. As a matter of law, we must advise that, absent a specific legislative or legislative committee authorization for an investigation or other legislative action granting access, a legislator has no greater right of access to State facilities that are not open to the general public than does any other member of the general public.

I hope this answers the request for a general review of law in this area.

Very truly yours,

JOSEPH E. BRENNAN  
Attorney General

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