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Administrative Procedure Act Dept. of Finance & Administration
STATE OF MAINE

Dept. of Finance & Administration
Inter-Departmental Memorandum Date November 1, 1977

To John P. O'Sullivan, Commissioner

Dept. Finance and Administration

From John M. R. Paterson, Deputy

Dept. Attorney General

Subject Administrative Procedure Act

This memorandum is in response to your oral request for advice regarding the Administrative Procedure Act, P.L. 1977, c. 551. Specifically, you have asked whether the term "rule" as found in § 8002(9) of that Act includes rules on such items as state financial and budgetary procedures.

The definition of rule in c. 551 includes within its scope any standard, code or statement of policy that interprets or makes specific the law administered by the agency. Excluded from the general definition are policies or memoranda concerning internal management of an agency or forms, instructions or explanatory statements which themselves cannot have the force of law. Many of the bureaus within Finance and Administration have statutory rule-making authority which is applicable to management of the State's internal affairs and do not apply to other citizens of the State. Your particular question was whether or not such "rules" constituted internal management matters and therefore were exempt from the definition of rule in c. 551.

Although I have not reviewed all of the statutory provisions under which each of the Bureaus within the Department of Finance and Administration operates, it is my general opinion that whenever any of those Bureaus is authorized to adopt rules and regulations applicable to any citizen or agency of the State of Maine, outside of the agency adopting such rule, that such action constitutes a rule within the meaning of the Administrative Procedure Act. It is clear from the general definition of rule that when any Bureaus within the Department adopts a rule that expands upon and makes explicit the general statutory power that is granted to it, that such action constitutes a rule within the all inclusive definition. While it might be argued that insofar as such rule relates only to internal management of state affairs, it is exempt under § 8002(9)(B)(1), I believe that such exemption applies only to internal management memoranda affecting the agency adopting the same. Thus when policies are adopted for all of State Government (including for example personnel rules and budgetary rules), such rules are not exempt from the general definition of "rule."

As I advised you in our meeting last week, if your Department believes that such actions ought not to be considered rules within the scope of the Act, it would be appropriate to address the same either by suggesting an amendment to the general definition of rules exempting "policies or memoranda concerning only the internal management of State Government" or by amending the statutory language of

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each Bureau and providing that rules adopted by such Bureau should not be considered rules within the scope of the Administrative Procedure Act.

I hope this is helpful. If I can provide you with any further information, please advise me.



JOHN M. R. PATERSON
Deputy Attorney General

JMRP:mfe

cc: Jerome S. Matus
Gregory Sample