

MAINE STATE LEGISLATURE

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*Maine Potato Council (State Agency)
Evidence of Access: Maine Potato Council
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

July 26, 1978

Dorothy Kelly
Maine Potato Council
Caribou Road
Presque Isle, Maine 04769

Re: Status of Maine Potato Council as a State Agency

Dear Dottie:

This is in response to your oral request for an opinion as to the status of the Maine Potato Council as a "state agency." The question does not lend itself to a categorical answer. To the extent that it receives and expends public funds, the Maine Potato Council must, for some purposes, necessarily be considered an agency of the State, or at least a "State-related agency." For other purposes, the Maine Potato Council apparently retains its characteristics as a private organization. As specific issues arise, you may well wish to seek additional advice from this office.

As a general matter, you have inquired as to the applicability to the Maine Potato Council of the State's so-called right-to-know law, Title 1 M.R.S.A. § 401, et seq. This law is not applicable to the Council.

By enactment of Chapter 653 of the Public Laws of 1977, the Legislature of the State of Maine declared that the

"Activities of the Maine Potato Council are of great benefit to the Maine economy and to the health and welfare of Maine citizens."

The Legislature found that public support for the activities of the Maine Potato Council would be of benefit to the Maine economy and concluded that

"Use of a portion of the potato tax proceeds to support the Maine Potato Council is an expenditure in the public interest."

Accordingly, the Legislature provided that 20% of the total monies received in any given year from the potato tax should be paid quarterly to the Maine Potato Council for:

"improvements in the coordination of efforts to improve the potato industry, promotion of Maine potatoes, and the Maine potato industry, assistance to potato farmers in improving potato farm practices and necessary administrative support to the Maine Potato Council"

The general provisions of Title 1 M.R.S.A. § 401, et seq. declare that "public proceedings" are to be open to the public and that notice shall be given prior to public proceedings where decisions will be made concerning the expenditure of public funds or taxation or the adoption of policy. "Public proceedings" are defined by Title 1 M.R.S.A. § 402.2 as

"The transaction of any functions affecting any or all citizens of the State by any of the following:

"A. The Legislature of Maine and its committees and subcommittees;

"B. Any body or commission of any State agency or authority, the Board of Trustees of the University of Maine, and any of its subcommittees, the Administrative Council of the University of Maine, the Board of Trustees of the Maine Maritime Academy and any of its committees or subcommittees; and

"C. Any board, commission, agency or authority of any county, municipality, school district or any other political or administrative subdivision."
(emphasis supplied.)

While the Council will, pursuant to Title 36 M.R.S.A. § 4571 be making decisions which will involve the expenditure of State tax monies, it does not come within the category of "agencies"

covered by this section.*

The Legislature did not indicate that the Maine Potato Council was to be a State agency, nor that its membership, administration or direction be subject to direct State control. The Legislature did, however, provide certain limitations as to the use of State funds which the Maine Potato Council received from the potato tax money. Title 36 M.R.S.A. § 4571, sub-§ 1-A, provides, in this regard, that:

"The Commissioner of Agriculture shall promulgate rules (1) Requiring the Maine Potato Council to submit to the commissioner prior to the beginning of any fiscal year, a budget showing, for funds paid to the council under this section, actual and estimated amounts available and expended for that fiscal year. . . (2) Governing the expenditure of funds paid to the council under this section for travel out of state; to the extent possible, the rule shall be identical to rules governing such travel by State employees, provided tht the rule shall require that the commissioner shall have the authority to approve or disapprove for conformance to the rule all expenditures before they are made."

* The term "state agency" is not specifically defined in Title 1 M.R.S.A. §§ 401-410. The Maine Administrative Procedure Act provides that:

"'Agency' means any body of State Government authorized by law to adopt rules, to issue licenses or to take final action in adjudicatory proceedings, including, but not limited to, every authority, board, bureau, commission, department or officer of the State Government so authorized; but the term shall not include the Legislature, Governor, courts, University of Maine, Maine Maritime Academy, school districts, special purpose districts or municipalities, counties or other political subdivisions of the State."
5 M.R.S.A. § 8002.

This definition is part of the Maine Administrative Procedure Act and is applicable for purposes thereof. It is not coextensive with the Freedom of Access Law and is cited here only for general reference. The Maine Potato Council is not authorized by law to adopt rules, etc.

It seems that by the very enactment of this section indicating that special rules may be adopted to govern expenditures by the Council, the Legislature was recognizing that the expenditures were not to be considered as expenditures of a typical State agency.* Nor is the Council, the creation of which is unrelated to state statute or regulation, "a body or commission of any state agency." (Cf. e.g. 36 M.R.S.A. § 4563 re:Maine Potato Commission or 36 M.R.S.A. § 4521 et seq. re: Maine Dairy and Nutrition Council.)

While it appears that the Council is not to be considered a State agency for the purpose of the so-called right-to-know law, this opinion is limited to the subject discussed herein and does not purport to address all other matters of the Council's functions which may or may not be governed by laws or policies applicable to State agencies. As these matters arise, we would be happy to provide advice as appropriate.

Sincerely,



SARAH REDFIELD
Assistant Attorney General

SR:mfe

cc: Potato Commission
Joseph Williams

*This analysis is consistent with earlier opinions of this office concerning other state-related bodies. See, e.g., Opinion of July 12, 1976, to John L. Martin.