

# MAINE STATE LEGISLATURE

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Workers Compensation Maine Potato Commission  
Maine Potato Commission Workers Compensation  
39 M.R.S.A. §-A

STATE OF MAINE

Inter-Departmental Memorandum Date October 20, 1978

To Bernard Shaw, Chairman

Dept. Maine Potato Commission

From John W. McCarthy, Asst. Attorney General

Dept. Attorney General

Subject Status of Employees and Members of Maine Potato Commission under the Workers' Compensation Act

STATEMENT OF FACTS:

Members of the Maine Potato Commission are appointed to serve by the Commissioner of the Department of Agriculture under the provisions of Title 36, M.R.S.A. §4563. With the exception of a \$25 per diem payment to the Chairman the Commissioners serve without pay though they are reimbursed for expenses. On behalf of the citizens of the State of Maine the Commissioners research and promote potatoes and potato products and adopt and promulgate rules for the Commission. The Commissioners utilize only part of their time on behalf of the Commission and may work apart from their duties with the Commission. The Commission employs an Executive Director who may in turn employ other administrative personnel.

Questions Asked:

1. Are the members and employees of the Commission covered by the Workers' Compensation Act?
2. Does the term "average weekly wages" as employed in the Workers' Compensation Act include wages, earnings or salary received by a Commissioner of the Maine Potato Commission from sources other than the Commission?

Questions Answered:

1. Yes. Members and employees of the Maine Potato Commission are covered by the Workers' Compensation Act.
2. Yes. The term "average weekly wages", as employed in the Workers' Compensation Act, includes the wages, earnings or salary of a commission member from all employers for whom he or she was working at the time of the injury in question.

REASONING:

Question Number 1:

Title 39, M.R.S.A. §5A defines employee as follows:

"Employee" shall include officials of the State, counties, cities, towns, water districts and all other quasi-public corporations of a similar character, every duly elected or appointed executive officer of a private corporation, other than a charitable, religious, educational or other nonprofit corporation,

and every person in the service of another under any contract of hire, express or implied, oral or written, . . . (Emphasis added)

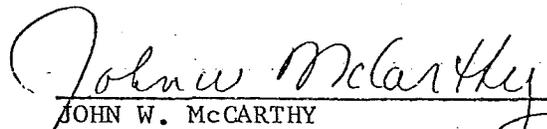
Section 5A specifically provides that officials of the State are included under the Workers' Compensation Act. Since the Commissioners are appointed by the Commissioner of the Department of Agriculture and are empowered to adopt and promulgate rules and regulations and make or enter into contracts in connection with the research and the promotion of potatoes and potato products under the provisions of Title 36, M.R.S.A. §4563A, they are officials of the State. Therefore, members of the Maine Potato Commission are covered by the Workers' Compensation Act when they are acting within the scope of their employment as Commissioners.

Employees of the Maine Potato Commission are also employees covered by the Workers' Compensation Act under the provision of Section 5A because they are in the service of the State under a contract of hire.

Question Number 2:

Title 39, M.R.S.A. §2D responds directly to the scope of the definition of "average weekly wages". It provides,

D. Where the employee is employed regularly in any week concurrently by 2 or more employers, for one of whom he works at one time and for another he works at another time, his "average weekly wages" shall be computed as if the wages, earnings or salary received by him from all such employers were wages, earnings or salary earned in the employment of the employer for whom he was working at the time of the injury.

  
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