

MAINE STATE LEGISLATURE

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AUGUSTA, MAINE 04333

March 5, 1979

Honorable Jerome Emerson
Maine State Senate
State House
Augusta, Maine 04333

Dear Senator Emerson:

You have requested an opinion regarding the authority of a county legislative delegation to subpoena witnesses and to compel the production of documents in connection with its review of the annual estimates prepared by the county commissioners. You have also inquired whether the Local and County Government Committee has such authority. For the reasons stated below, it is my opinion that (a) a county legislative delegation has no such authority and (b) the Local and County Government Committee may be vested with such power by the Legislature.

Article IV, part 1, section 1 of the Constitution of Maine provides that "[t]he legislative power shall be vested in two distinct branches, a House of Representatives, and a Senate, each to have a negative on the other, and both to be styled the Legislature of Maine...." As provided in Article IV, part 3, section 1, "[t]he Legislature...shall have full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this State...." As recently stated by the Supreme Judicial Court of Maine, in carrying out its constitutional function of legislating, the "Legislature has and must have 'the power to exact information.'" Maine Sugar Industries, Inc. v. Maine Industrial Building Authority, Me., 264 A.2d 1, 6 (1970) quoting McGrain v. Daugherty, 273 U.S. 135 (1927).

McGrain v. Daugherty, supra was the first case in which the United States Supreme Court took advantage of the opportunity to discuss the investigative power of Congress. In that case, it was claimed that Congress has the inherent power to gather information, including the power to compel the attendance of witnesses and the production of documents. The Supreme Court agreed and stated:

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"We are of opinion that the power of inquiry - with process to enforce it - is an essential and appropriate auxiliary to the legislative function....

A legislative body cannot legislate wisely or effectively in the absence of information respecting the condition which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information - which not infrequently is true - recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the constitution was framed and adopted. In that period the power of inquiry - with enforcing process - was regarded and employed as a necessary and appropriate attribute of the power to legislate - indeed, was treated as inhering in it. Thus, there is ample warrant for thinking, as we do, that the constitutional provisions which commit the legislative function to the two houses are intended to include this attribute to the end that the function may be effectively exercised."

273 U.S. at 174-75. On several occasions, the United States Supreme Court has reaffirmed its holding in McGrain v. Daugherty. See, e.g. Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539, 544-45 (1963); Sweezy v. New Hampshire, 354 U.S. 234 (1957); Watkins v. United States, 354 U.S. 178, 187 (1954). As noted above, the Law Court relied upon the Supreme Court's decision in McGrain v. Daugherty in holding that the Maine Legislature has inherent power to conduct investigations and obtain information which is relevant to their law-making function. Maine Sugar Industries, Inc. v. Maine Industrial Building Authority, supra. Moreover, there is ample authority from state courts in other jurisdictions supporting the proposition that a state legislature has inherent investigative authority which includes the power to issue subpoenas for the attendance of witnesses and the production of documents. See, e.g., Johnston v. Gallen, 217 So.2d 319, 320-22 (Fla. 1969); People exrel. Legislative Commission on Low Income Housing v. Keefe, 36 Ill.2d 460, 223 N.E.2d 144, 146-47 (1967); Commonwealth exrel. Carcaci v. Brandamore, 327 A.2d 1, 3-4 (PA. 1974); Verry v. Trenbeath, 148 N.W.2d 567, 575 (N.D. 1967); Ficarelli v. New Jersey State Commission of Investigation, 55 N.J. 249, 261 A.2d 129, 136-37 (1970), aff'd, 406 U.S.472 (1972).

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While the Legislature has inherent investigatory authority, the Legislature's business, to a large extent, is conducted by means of committees. It is well-established that legislative committees do not have the inherent power to investigate that is possessed by the Legislature itself. In order to function as an investigatory body, with the power to compel the attendance of witnesses and the production of documents, a legislative committee must be duly authorized by the Legislature. See Wallace v. Brewer, 315 F.Supp. 431, 446 (D.C.M.D. Ala. 1970); Goldman v. Olson, 286 F.Supp. 35,43 (W.D. Wis. 1968); Liveright v. Joint Committee of the General Assembly of the State of Tennessee, 279 F.Supp. 205, 214 (M.D.Tenn. 1968); Hagaman v. Andrews, 232 So.2d 1, 6 (Fla.1970); Murphy v. Collins, 20 Ill. App.3d 181, 312 N.E. 2d 772, 785 (1974).ⁱ

In Maine, the circumstances under which a committee may be authorized by the Legislature to act as an investigating committee are specifically set forth in 3 M.R.S.A. §§165 and 401, et.seq. (1979). 3 M.R.S.A. §165 (1979) deals specifically with the powers and duties of joint standing and joint select committees. Subsection 7 of section 165 provides in relevant part:

"When the duties assigned to a [joint standing or joint select] committee so require, the Legislature may grant to it the power to administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents and testimony, and to cause the deposition of witnesses,..."

When either a joint standing or a joint select committee is granted the powers enumerated in 3 M.R.S.A. §165(7) (1979) by the Legislature, it functions as an investigating committee and must act in accordance with the provision of 3 M.R.S.A. §401, et.seq. (1979).

By Chapter 593 section 3 of the Public Laws of 1975, the Legislature enacted 3 M.R.S.A. §§401-474 (1979) an act entitled

1. It is interesting to note that by statute in some states, a legislative subpoena may be issued upon the request of any member of the Legislature. See In re Marshall, 478 So. 2d 1, 2-3 (Mo. 1977).

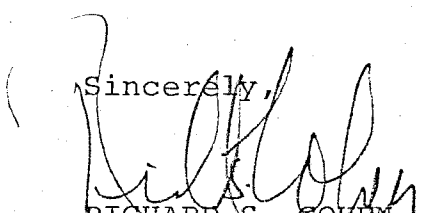
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"Rules for Legislative Investigations." 3 M.R.S.A. §402(4) (1979) defines an "investigating committee" as "any committee of the Legislature which has been granted by the Legislature the power to administer oaths, issue subpoenas and take depositions...." The "Rules for Legislative Investigations" is a comprehensive Act governing the procedures to be followed by any legislative investigating committee.

A review of the foregoing statutory provisions discloses that in order for a legislative committee to act as an investigating committee it must be duly authorized as such by the Legislature pursuant to either 3 M.R.S.A. §165(7) (1979) or 3 M.R.S.A. §401, et. seq. (1979). It is obvious that a county legislative delegation is not a "committee of the Legislature" and therefore, by definition, cannot act as an "investigating committee" as that term is defined in 3 M.R.S.A. §402(4) (1979). On the other hand, the Local and County Government Committee is a duly established joint standing committee of the Legislature. See Rule 13, Joint Rules of the 109th Legislature. One of the duties of the Local and County Government Committee is to review the budget estimates from each county and make recommendations to the Legislature. Consequently, if the Legislature chose to do so, it could empower the Local and County Government Committee to act as an investigating committee pursuant to 3 M.R.S.A. §165(7) (1979).

I hope this information is helpful to you. Please feel free to call upon me again if I can be of further assistance to you.

Sincerely,



RICHARD S. COHEN
Attorney General

RSC:sm