

# MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

November 19, 1979

The Honorable James K. McMahon  
State Representative, District 111  
Box 125  
Kennebunkport, Maine 04043

Dear Representative McMahon:

You have requested an opinion from this office as to whether the Freedom of Access Law of the State of Maine applies to a private, non-profit community action corporation.

The corporation in question has been designated by the county commissioners as the community action agency for the community pursuant to the provisions of 42 USC § 2790 (Title II of the Economic Opportunity Act).<sup>1</sup> The board of directors of the corporation consists of six members appointed by the county commissioners, six members elected from the low income sector of the county, and six members of the business community pursuant to 42 USC § 2791(b). The corporation receives federal funds from the Community Services Administration through the county pursuant to the provisions of 42 USC § 2781, et seq.

Both the Maine Freedom of Access Law and the federal regulations pertaining to the activities of a community action agency are applicable to the activities of this corporation.

1. Applicability of the Maine Freedom of Access Law

The provisions of the Maine Freedom of Access Act (hereinafter referred to as the Access Law), 1 M.R.S.A. §§ 401-410, can be divided into two categories: (1) those provisions which apply to public proceedings<sup>2</sup> and those provisions which apply to public records.<sup>3</sup>

1 A community action agency shall be a State or political subdivision of a State (having elected or duly appointed governing officials), or a combination of such political subdivisions, or a public or private non-profit agency or organization which has been designated by a State or such a political subdivision or combination of such subdivisions, or an Indian tribal government . . . .  
(emphasis supplied) 42 USC § 2790.

<sup>2</sup> 1 M.R.S.A. § 402(2), § 403, § 404, § 405, § 406.

<sup>3</sup> 31 M.R.S.A. § 402(3), § 407, § 408, § 409.

A. Public Proceeding Provisions of the Access Law

1 M.R.S.A. § 402(2) provides in relevant part:

The term "public proceedings" as used in this subchapter shall mean the transactions of any functions affecting any or all citizens of the state or any of the following:

. . .

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

Therefore, the 'public proceedings' provisions of the Access Law are applicable to this corporation if it is an "agency or authority of any county."

Since the corporation has been designated by the county commissioners as a community action agency pursuant to 42 USC § 2790, it clearly falls within the "agency or authority of any county" provisions of 1 M.R.S.A. § 402(2). Furthermore, the Legislature declared in § 401 of the Access Law that the purpose of the Law is to insure public access to public proceedings. The Legislature also provided that the provisions of the Law should be liberally construed. 1 M.R.S.A. § 401. The corporation in question, although not a governmental body in the strict sense, has been created pursuant to the provisions of the Economic Opportunity Act and has been designated by the county commissioners as the agency responsible for providing services to the rural poor. Federal law provides that community action agencies such as the corporation in question have the authority to receive and administer funds from federal, state, and local governments. 42 USC § 2795. Clearly, the purpose of the Access Law requires that the public have access to the meetings of an organization which allocates substantial amounts of public funds.

B. Public Records Provisions of the Freedom of Access Law

A record of the corporation in question is a public record if it is "in the possession or custody of an agency or public official of this State or any of its political subdivisions"

and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business." 1 M.R.S.A. § 402(3).

Although the corporation is not a governmental agency in the normal sense of the term, it has been designated a community action agency by the county commissioners pursuant to 42 USC § 2790. The corporation receives and disburses government funds as a prime element of its work. In view of the interrelationship between the corporation and various levels of government, the records of the corporation contain information relating to the transaction of governmental business. Therefore, the records of the corporation are "public records" within the meaning of 1 M.R.S.A. § 402(3).<sup>4</sup>

## 2. Applicability of Federal Regulations

The activities of the corporation are also subject to federal regulations which have been promulgated by the Director of the Community Services Administration pursuant to 42 USC § 2796. The federal regulations provide that community action agencies must hold public meetings either on a regular basis, 45 CFR § 1070.2-3 (a) 1, or upon written request by any person or group, 45 CFR § 1070.2-3 (a) 2. Section 1070.13 provides that all community action agencies must make available for public inspection certain classes of books and records as set forth in § 1070.1-4. Reference should be made to 45 CFR § 1070.1-4 to determine whether a particular document must be made available for public inspection.

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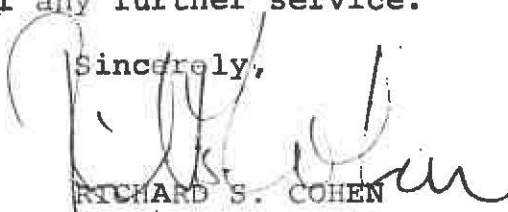
<sup>4</sup>We have assumed from your letter that the corporation in question operates solely as a community action agency pursuant to the regulations of the Community Services Administration. The question of public access might well be more complicated with respect to a corporation which performs some public functions but which also carries out unrelated activities of an entirely private nature.

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In conclusion, the activities of a private corporation which has been designated by the county commissioners as a community action agency are subject both to the requirements of the Maine Freedom of Access Act and the federal regulations promulgated by the Community Services Administration.

I hope this information is helpful. Please feel free to call on me if I can be of any further service.

Sincerely,



RICHARD S. COHEN  
Attorney General

RSC:mfe

bcc: Susan Herman