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Honorable Jasper S. Wyman
Webb Road
R.F.D. #1
Pittsfield, Maine 04967

Dear Representative Wyman:

You have asked whether the meetings of the Interrelations Committee, which was formed pursuant to a contract between School Administrative District #53 and the Maine Central Institute, are subject to the provisions of Maine's Freedom of Access Law, 1 M.R.S.A. §§ 401-410. Because the Law Court has not had occasion to rule on this issue and for the reasons stated in the body of our opinion, the answer to your inquiry is not entirely free from doubt. Nevertheless, it is our opinion that the Access Law does apply to the Committee.

FACTS:

School Administrative District #53 consists of the towns of Pittsfield, Burnham and Detroit. Because the District does not maintain an approved secondary school, it contracts with the Maine Central Institute (hereinafter "MCI"), a private academy, for the education of its students in grades 10 through 12.[1] See 20 M.R.S.A. § 1289.

1/ Except for a very small number of pupils who attend special education programs, all of the District's students of secondary school age attend MCI. In school year 1979-1980, this amounted to 318 students. It is estimated that for school year 1980-1981, the number will increase to 356. Furthermore, the students from the District constitute approximately 75% of MCI's high school students.

The contract[2] between the District and MCI provides for an "Interrelations Committee" with representatives from both the District and MCI. Specifically, the membership of the Committee includes four members of the MCI Board of Trustees,[3] four members of the SAD #53 Board of Directors,[4] and ex officio, the Superintendent of the District, the Headmaster of the Institute, and the Chairmen of both Boards. The functions of the Committee are specified in the contract as follows:

> "It will be the purpose of this Committee to iron out any differences of opinion which occur, to listen to all complaints from either party and to make recommendations to School Administrative District No. 53 Board of Directors and to Maine Central Institute Board of Trustees.
>
> "Courses of study and curriculum for students may be recommended by the Interrelations Committee. The Interrelations Committee may recommend regulations and policies pertaining to other educational activities for students. The Interrelations Committee may make recommendations on renewal of teacher contracts as well as disciplinary policies."

Finally, as the contract appears to contemplate, the practice is for the Board of MCI to make the administrative and operational decisions related to the governing of the Institute.[5] We are informed, moreover, that the meetings of that Board are not open to the public.

2/ When used in this opinion, the "contract" refers to the written agreement between the District and MCI for school year 1979-1980.

3/ The total number of trustees on the MCI Board is 31.

4/ The total number of directors on the SAD #53 Board is 11.

5/ Paragraph 7 of the contract provides as follows:

> "7. Maine Central Institute agrees to assume all the legal requirements of School Administrative District No. 53 for the education of tuition students in grades 10, 11 and 12."

LEGAL ANALYSIS:

The general rule established by the Freedom of Access Law with respect to meetings is that, unless specifically excepted, all "public proceedings" are to be open to the public. 1 M.R.S.A. § 403. Since there are apparently no exceptions which would categorically exempt the Interrelations Committee from the requirements of the Access Law, the question is whether its meetings constitute public proceedings. For purposes of the pending question, the relevant definition of that term is found in 1 M.R.S.A. § 402(2)(C) which provides as follows:

> "2. Public proceedings. The term 'public proceedings' as used in this sub-chapter shall mean the transactions of any functions affecting any or all citizens of the State by any of the following:
>
> * * * *
>
> "C. Any board, commission, agency or authority of any county, municipality, school district or any other political or administrative subdivision."

In determining whether the above definition encompasses the Interrelations Committee, two preliminary points must be made. The first is that there is no magical formula for the resolution of questions concerning the applicability of the Access Law to groups which comprise elements of both the public and private sectors. Prior opinions of this office have indicated that it is necessary to consider a variety of criteria. Paramount among these are the following: 1) the nature and extent of the powers of the body; 2) the origin of the body; 3) the composition and method of selecting its membership; and 4) the time frame of its mandate. While the above criteria provide guidance, the presence or absence of one or more characteristics is not necessarily dispositive of the issue.

The second preliminary point concerns the spirit in which the Freedom of Access Law is to be interpreted. The Legislature has expressed a clear intent that the Access Law in general, and the definition of "public proceedings" in particular, are to be liberally construed. Regarding the former, the legislative intent is unequivocally stated in the statute itself. Thus, 1 M.R.S.A. § 401 provides:

> "The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter.
>
> "This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent."

With respect to the meaning of "public proceedings," the legislative intent can be gleaned from the evolution of that definition. In the original Freedom of Access Law, enacted in 1959, the term was defined as follows:

> "Definition of public proceedings. The term 'public proceedings' . . . shall mean the transactions of any functions affecting any or all citizens of the State by any administrative or legislative body of the State, or of any of its counties or municipalities, or of any other political subdivision of the State, which body is composed of 3 or more members, with which function it is charged under any statute or under any rule or regulation of such administrative or legislative body or agency." P.L. 1959, c. 229.

Comparison of the 1959 definition with the present version reveals that the Legislature has made, inter alia, the following changes: 1) deleted the requirement that the entity be a "legislative or administrative" body; 2) deleted the requirement that the body consist of at least 3 members; and 3) deleted the requirement that the function being performed be one with which the body is charged under a statute, rule or regulation. In short, the legislative practice has consistently been to eliminate language which might be construed to limit the applicability of the Access Law.

As the above discussion indicates, then, the Legislature has mandated that the Access Law be liberally interpreted. See Moffett v. City of Portland, Me., 400 A.2d 340 (1979). Thus, all close questions as to its applicability should be resolved in favor of the public's right to access.

Turning to the question at hand, we shall proceed to set forth the reasons for our conclusions that the Interrelations Committee is subject to the provisions of the Access Law. In the process, we shall address the arguments which might be advanced to support the contrary result.

In our view, the functions and duties of a particular entity represent the most important factor to be considered in determining whether the entity falls within the ambit of the Access Law. From this perspective, it seems beyond debate that the subject matter with which the Interrelations Committee deals - namely, the education of the District's secondary school students - is one of vital public importance. Furthermore, the Committee's role is not limited to minor or peripheral matters. Under the contract, the Committee is empowered to make recommendations with respect to "courses of study and curriculum," "regulations and policies pertaining to other educational activities for students," and "renewal of teacher contracts as well as disciplinary policies." Simply stated, it is difficult to conceive of issues which have traditionally been of greater concern to the public.

It may be argued that, notwithstanding the subjects with which the Interrelations Committee deals, it is exempt from the Access Law because its role is purely advisory. While that fact may merit consideration in reaching the ultimate conclusion, we reject the contention that advisory bodies are automatically excluded from the Law.

The critical problem with the argument for a blanket "advisory body" exclusion is that it is not supported by the statutory language. In relevant terms, public proceedings are defined to include "the transactions of any functions affecting any or all citizens of the State by . . . [a]ny board, commission, agency or authority of any . . . school district. . . ." (Emphasis added.) There is no indication of a legislative intent to restrict the definition to bodies authorized to make final decisions.

The breadth of the Maine statute becomes clearer when compared with laws in other states which specifically allow access only to decision-making bodies. For example, the Pennsylvania Open Meeting Law grants the public a right of

access solely to those meetings at which "formal action" is scheduled or taken. Pa. Stat. Ann. tit. 65, § 262 (Purdon). Furthermore, "formal action" is defined as "the taking of any vote on any resolution, rule, order, motion, regulation or ordinance or the setting of any official policy." Pa. Stat. Ann. tit. 65, § 261 (Purdon). By contrast, the Maine law broadly encompasses "the transactions of any function." Given the mandate for a liberal construction, it would be inappropriate to infer from this language a categorical exemption for advisory bodies.

We are also not persuaded that as a matter of policy the Legislature could not have intended to extend the Access Law to bodies lacking the power to make final decisions. It would have been eminently reasonable for the Legislature to have concluded that the citizen ought to have access not only to the final decision, but also to the process by which that decision was reached and the reasons behind it. Addressing that state's Sunshine Law, the Florida Supreme Court observed that its purposes could be accomplished "only by embracing the collective inquiry and discussion stages within the terms of the statute." Town of Palm Beach v. Gradison, Fla., 296 So.2d 473, 479 (1974).

On the subject of advisory bodies, we should mention one final point which is uniquely relevant to the question you have raised. As noted earlier, the responsibility for making decisions affecting the District's secondary school students generally rests with MCI. Furthermore, the sessions of the Institute's Board of Trustees are not open to the public. As a result, it would appear that the citizens of the District would not have access to the meetings at which many of the final decisions on secondary education may be reached. Under these circumstances, it would seem even more imperative that there be public access to the Committee empowered to make recommendations to the MCI Board.

Having considered the criterion which we deem most critical to a determination of the applicability of the Access Law, namely, the functions and powers of the Committee, we may now briefly discuss the other factors relevant to your inquiry. These include the origin of the Interrelations Committee, the composition of its membership and the time frame in which it operates.6/

6/ In a prior opinion, we also suggested other factors which might be relevant to questions of this nature. These include the degree of a committee's autonomy from other officials and agencies and the source of a committee's funding, if any. Since neither of these factors appear particularly useful in resolving your inquiry, we do not believe that they require extended treatment. Our discussion of the significance of the Committee's advisory role covers the same ground that would be relevant to the question of autonomy. With respect to funding, while the Committee itself apparently receives no funds, we would point out that its members represent entities which are funded either entirely or in significant measure with public money.

It is important to note that the Interrelations Committee derives its existence from a contract, entered into pursuant to statute, for the performance of a public function. See 20 M.R.S.A. § 1289. Thus, in contrast with an informally created group of concerned citizens, the Committee has a legally established existence. Its official role, albeit advisory, in the operation of the secondary education program militates in favor of public access to its meetings.

The official status of the Interrelations Committee is reinforced by the fact that, while it is not strictly a creature of statute, it is clearly a variation of the "joint committee" authorized by 20 M.R.S.A. § 1289. Under that statute, a school administrative district and a private academy, which have a contract for the provision of secondary school education, may create a joint committee consisting of representatives from the governing boards of each entity.7/ The Interrelations Committee resembles the "joint committee" in every material respect, except that SAD #53 and MCI have chosen to limit it to an advisory role. Nevertheless, its close similarity to the "joint committee" serves to strengthen its official role in the operation of the District's secondary education program.

7/ The relevant language in 20 M.R.S.A. § 1289 provides as follows:

> "When such a contract exists, a joint committee may be formed, if approved by a majority vote of both the trustees and the superintending school committee or school directors. Such joint committee shall consist of a mutually agreed upon number of members of the school committee or board of directors of each contracting administrative unit chosen from their own membership and an equal number of trustees of the academy. Other membership arrangements are permissible when agreed upon by the contracting parties. Said joint committee shall be empowered to select and employ the teachers for the academy, to fix salaries, to arrange the course of study, to supervise the instruction and to formulate and enforce proper regulations pertaining to other educational activities of the school. The superintendent of schools of the contracting administrative unit in which the academy is located shall be secretary ex officio of the joint committee and shall be assigned such supervisory duties in connection with the school as the joint committee shall determine."

The composition of the Committee need be discussed only to refute the possible argument that a body whose membership consists, in part, of private individuals cannot be deemed to be a "board, commission, agency or authority of . . . [a] school district." We are aware of no precedent to the effect that the presence of private individuals on a committee automatically exempts that body from the Access Law. While it may be a factor generally deserving of consideration, in our view it carries little weight in the present instance. Although the MCI Trustees are technically representing a private institution, the Committee's very existence stems from the fact that this private institution is carrying out a public function at public expense. Accordingly, we have serious doubts as to whether it is even accurate to characterize the Trustees, when sitting as members of the Interrelations Committee, as purely private individuals.8/

The final factor concerns the time frame in which the Committee operates. In Henderson v. Los Angeles City Bd. of Education, App., 144 Cal. Rptr. 568 (1978), the court held that under the relevant California statute the meetings of certain types of ad hoc committees need not be open to the public. In reaching this conclusion, the court clearly distinguished between permanent and ad hoc bodies. The factual differences between the Henderson case and the situation before us are instructive. Henderson dealt with a nonpermanent committee established to perform a single task, namely, the evaluation of candidates to fill a vacancy on the Board of Education. By contrast, the Interrelations Committee is an ongoing entity with authority to consider a wide range of issues related to secondary education. Both the permanent character and broad mandate of the Committee support the proposition that its meetings should be open to the public.

8/ The Legislature appears to have recognized in another section of the Freedom of Access Law, the quasi-public nature of a private school educating students at public expense. Thus, 1 M.R.S.A. § 405(6)(A) authorizes executive sessions for:

> "B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds. . . ." (Emphasis supplied.)

Before concluding, we should address one additional argument raised in response to your opinion request. It is contended that the presence of the public will have an inhibiting effect on the efforts of the Interrelations Committee to maintain an harmonious relationship between SAD #53 and MCI. While we are not unsympathetic to this argument, we would note that it is raised with some frequency in the context of Freedom of Access questions. In the final analysis, it is a policy matter for legislative consideration. We would merely observe that to date the Legislature has apparently concluded that as a general proposition the importance of the public's right to know outweighs any inhibiting effect which may be brought about by its presence at meetings.

CONCLUSION:

For the reasons outlined above, it is our opinion that the meetings of the Interrelations Committee are subject to the provisions of Maine's Freedom of Access Law. While the most obvious consequence of our conclusion is that the meetings of the Committee should be open to the public, 1 M.R.S.A. § 403, we would add for purposes of clarity that the Committee, like any other body governed by the Access Law, may hold executive sessions when authorized by statute. 1 M.R.S.A. § 405.

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

Sincerely,

RICHARD S. COHEN
Attorney General

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