

# MAINE STATE LEGISLATURE

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JAMES E. TIERNEY  
ATTORNEY GENERAL



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STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

February 2, 1981

The Honorable Donald A. Strout  
State Representative  
State House  
Augusta, Maine 04333

Dear Representative Strout:

This will respond to your inquiry as to whether "a Deputy District Attorney or Assistant District Attorney may organize a collective bargaining unit within the state."

In the course of researching your question, we discovered that this issue has already been decided by the Maine Labor Relations Board. In a decision dealing with the eligibility for collective bargaining of persons in certain unclassified positions in State service, the Board held that assistant district attorneys are not covered under the State Employees Labor Relations Act.<sup>1/</sup> That portion of the Board's decision which relates to assistant district attorneys is quoted below:

Assistant District Attorneys (U201)  
should be exempted from coverage under the State Employees Labor Relations Act because these persons are subject to a joint employment relationship and for purposes of this Act are tantamount to being County employees since they are hired by the local District Attorney and their funding is contingent on County support. Therefore, we feel that the Assistant District Attorney classification does not qualify as a "state employee" and therefore, should be exempted from collective bargaining coverage under the provisions of Section 979-A, paragraph 6 of the State Employees Labor Relations Act.

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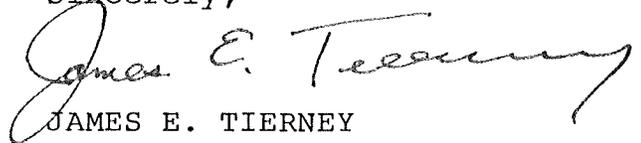
<sup>1/</sup> The decision which has been provided us is entitled "Interlocutory Decision of Appellate Proceedings before the Maine Labor Relations Board." Although the decision is undated, we are informed that it was handed down sometime in 1977. We are further informed that the decision became final upon the subsequent resolution of certain additional questions dealing with classified positions.

Although the Board's decision does not specifically address the position of deputy district attorney, we can see no arguments which would justify a different result with respect to that position. Under 30 M.R.S.A. § 554-A(1), a deputy district attorney is simply an assistant district attorney with certain additional responsibilities.<sup>2/</sup> In light of the reasoning in the Board's opinion, it would necessarily have to reach the same conclusion for deputy district attorneys.

To conclude, the Maine Labor Relations Board has determined that deputy and assistant district attorneys are exempt from coverage under the State Employees Labor Relations Act and are thus not entitled to organize a collective bargaining unit within the State. Since the Legislature has vested in the Board the authority to decide these issues, see 26 M.R.S.A. § 979-G, we believe that its decision on this matter, in the absence of a contrary ruling by the courts, should be treated as a binding resolution of the question.<sup>3/</sup>

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

Sincerely,



JAMES E. TIERNEY  
Attorney General

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<sup>2/</sup> The second paragraph of 30 M.R.S.A. § 554-A(1) provides as follows:

Each district attorney may designate one full-time assistant district attorney or, if there is no full-time assistant district attorney, one part-time assistant district attorney to be his deputy. The deputy shall, in the absence of the district attorney, act in his stead and have the authority, duties and responsibilities of the district attorney. Notwithstanding any other provision of law, any full-time assistant district attorney designated as a deputy district attorney may receive a salary up to 80% of the salary designated for the district attorney.

<sup>3/</sup> Should a deputy or assistant district attorney believe that there now exist factors which would warrant a different result, the appropriate course of action would be to follow the procedures established by the Legislature in the State Employees Labor Relations Act, 26 M.R.S.A. c. 9-B.