

# MAINE STATE LEGISLATURE

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JAMES E. TIERNEY  
ATTORNEY GENERAL



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

May 11, 1981

Honorable Bonnie Post  
House of Representatives  
State House  
Augusta, Maine 04333

Dear Representative Post:

You have inquired as to the applicability of the Maine Administrative Procedure Act, 5 M.R.S.A. §§ 8001, et seq. and the Maine Freedom of Access Law, 1 M.R.S.A. §§ 401, et seq. to the Maine Sardine Council. I understand that you have introduced a bill in this legislative session which expressly provides that the Maine Sardine Council shall be subject to both of these laws. It is the view of this office that the portion of the proposed amendment pertaining to the Maine Administrative Procedure Act is unnecessary, as the present law clearly provides that Sardine Council rulemaking activities are subject to this Act. However, legislative clarification would be desirable on the issue of the applicability of the Maine Freedom of Access Law to the Sardine Council.

The applicability of the Maine Administrative Procedure Act to Sardine Council rulemaking activities is established in 10 M.R.S.A. § 1704, which provides in part:

The Maine Sardine Council may prescribe in a manner consistent with the Maine Administrative Procedure Act, rules and regulations for carrying out the purposes of this chapter [10 M.R.S.A. chapter 309]. . . .

While chapter 309 deals only with trademark and minimum price-setting activities of the Sardine Council, it appears that the Sardine Council has no other rulemaking functions. Therefore, there is no need for a provision in 36 M.R.S.A. chapter 713 concerning the applicability of the Administrative Procedure Act.

Rather than render an opinion on the applicability of the Maine Freedom of Access Law to the Maine Sardine Council, this office would advise that the law on this issue is unclear and that legislative clarification would be desirable. The proposed committee amendment to L.D. 1416, "AN ACT Concerning the Maine Sardine Council," would achieve this objective, as it expressly provides that the Sardine Council is subject to the provisions of the Freedom of Access Law, but also provides that certain records are confidential, and therefore protected from public disclosure. A copy of the committee amendment is attached.<sup>1/</sup>

If you have any questions concerning this matter, please do not hesitate to contact our office.

Sincerely,

*Stephen L. Diamond*

STEPHEN L. DIAMOND  
Deputy Attorney General

SLD/ec

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<sup>1/</sup> In the final analysis, the substance of the clarification on the applicability of the Freedom of Access Law is a matter of policy. Thus, our observation that the attached committee amendment would accomplish this objective is not intended to suggest that it is the only approach to the problem.