

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



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

January 21, 1982

James S. Henderson
Deputy Secretary of State
State Office Building
Augusta, Maine 04333

Dear Mr. Henderson:

This will respond to your inquiry of November 5, 1981, in which you ask whether the Maine Clean Indoor Air Act prohibited smoking in polling places. For the reasons set out below, it is our opinion that the statute does apply to persons who smoke at polling places.

The starting point for all statutory interpretation is the language of the statute itself. Concord General Mutual Insurance Company v. Patron-Oxford Mutual Insurance Company, Me., 411 A.2d 1017, 1020 (1980). See also Consumer Products Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980). The Maine Clean Indoor Air Act provides that "[n]o person may smoke tobacco or any other substance in any public proceedings which are held inside, except as otherwise provided in this section." 22 M.R.S.A. § 1578(1) (emphasis supplied). If elections are considered to be "public proceedings," then smoking is prohibited. The statute defines public proceedings in the following manner.

"Public proceedings," as used in this section, means the transactions of any function, affecting any or all citizens of the state by any of the following:

A. The Legislature and its committees and subcommittees;

B. Any board or commission of any state agency or authority, the board of trustees of the University of Maine and any of its committees and subcommittees, the administrative council of the University of Maine, the board of trustees of the Maine Maritime Academy and any of its committees and subcommittees; and

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C. Any board, commission, agency or authority of any county, municipality, school district or any other political or administrative subdivision.

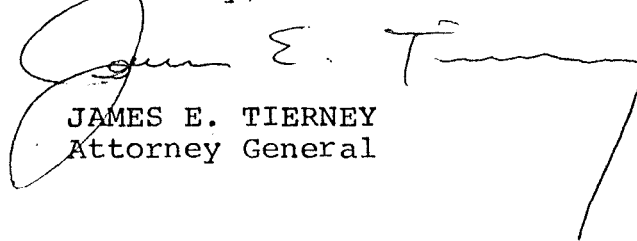
22 M.R.S.A. § 1578(3) (emphasis supplied). As more fully explained below, it is our conclusion that elections are transactions which are carried out by a public agency and which affect the citizens of the State.

Elections are conducted by officials appointed by the municipalities. See 21 M.R.S.A. § 531 et seq. Therefore, the election officials should be treated as agents of the municipality for the purpose of the Maine Clean Indoor Air Act. On election day, the election officials are responsible for supervising the procedures at each polling place. See 21 M.R.S.A. § 801, et seq. It is beyond serious dispute that elections affect any or all citizens. Consequently, the clear language of the statute requires that elections be treated as "transactions" of "any board, commission, agency or authority of any county, municipality, school district or any other political or administrative subdivision." 22 M.R.S.A. § 1578(3).

"Where the words of a statute are clear and unambiguous, they should be strictly construed, and [the court] need not look beyond them to the purpose of the legislation." Concord General Mutual Insurance Company, 411 A.2d at 1020. See also Rubin v. United Hill, 437 U.S. 153, 184 n. 29 (1978). In accordance with this principle of statutory construction, we conclude that the Maine Clean Indoor Air Act forbids smoking at voting places unless all those present consent.^{1/}

I hope that you find this information helpful. Please feel free to contact me if I may be of any further assistance.

Sincerely,



JAMES E. TIERNEY
Attorney General

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^{1/} "Smoking at a public proceeding shall be allowed, provided all members present have given their consent for others to smoke." 22 M.R.S.A. § 1578(5).