

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

May 5, 1982

Michael Povich
District Attorney
Hancock County Courthouse
Ellsworth, Maine 04605

Dear Mike:

You have sought an opinion from this Office on the question of whether a deputy sheriff who is compensated solely from fees received for the service of civil and/or criminal process is a "public official" for purposes of the so-called Freedom of Access Law, 1 M.R.S.A. §401 et seq. The more specific question you pose is whether the records of payment received by such deputies are "public records" under 1 M.R.S.A. §402(3). We answer your question in the affirmative.

There is little question that a deputy sheriff is to be considered a "public official" for most purposes. See, e.g., State v. Brown, 129 Me. 169 (1930). We see no reason, for purposes of the Freedom of Access Law, to make distinctions among deputy sheriffs based upon the method whereby they are compensated. While it is within the power of a county to employ deputies solely for the service of civil and/or criminal process, and to permit those deputies to retain the fees collected as their sole compensation, see 30 M.R.S.A. §2(4)(B), it is nowhere stated that these deputies do not have and could not exercise the same powers as full-time or part-time deputies. The only distinction established by our statute is the method of payment.

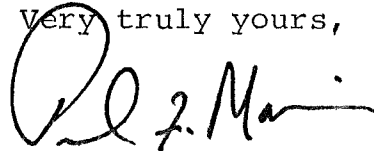
The liberality required in construing the Freedom of Access Law also mandates this result. See 1 M.R.S.A. §401. It cannot be seriously suggested that the service of civil and criminal process is not a matter of substantial public interest. These

deputies, and no other persons, have been vested with the power, inter alia, to call persons into court by notifying them of the initiation of legal proceedings against them. That such power involves "the transaction of public or governmental business," 1 M.R.S.A. §402(3), cannot be gainsaid.

For these reasons, we conclude that a deputy sheriff who is compensated wholly from fees for the service of civil or criminal process is a "public official" under 1 M.R.S.A. §402(3) and that any records kept by him related to such service or compensation are "public records" under that section.

If you have any further questions, please continue to contact this Office.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul F. Macri". The signature is written in a cursive style with a large initial "P" and a long horizontal stroke at the end.

PAUL F. MACRI
Assistant Attorney General

PFM/ec