

MAINE STATE LEGISLATURE

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JACK H. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
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August 5, 1982

Hon. Arthur A. Stilphen
Commissioner
Department of Public Safety
36 Hospital Street
Augusta, ME 04330

Dear Commissioner Stilphen:

You have inquired into whether the following officers are entitled to compensation for appearances in court during off-duty periods, under 4 M.R.S.A. §173 and § 252:

- 1) Liquor Inspector I, Liquor Inspector II and Director, Liquor Enforcement whose law enforcement duties are defined by 28 M.R.S.A., § 59;
- 2) Fire Inspector I, Fire Inspector II, Assistant State Fire Marshal and State Fire Marshal whose law enforcement duties are defined by 25 M.R.S.A. § 2396;
- 3) Capitol Security Police Officer, Capitol Security Police Sergeant and Capitol Security Police Chief whose law enforcement duties are defined by 25 M.R.S.A., § 2908; and,
- 4) Special Agent Investigator, Senior Agent or other special investigator assignment whose enforcement duties are granted by authority of 5 M.R.S.A., § 202.

For the reasons which follow, our answer to this question is that all of these officers are entitled to be compensated on an hourly basis at the rate they are paid for normal hours worked. For the sake of clarity, the discussion of 4 M.R.S.A. § 173 will be under the heading of "District Court" and 16 M.R.S.A. § 252 under the heading of "Superior Court".

DISTRICT COURT

4 M.R.S.A. § 173(4) provides "... all law enforcement officers appearing in District Court at times other than their regular working hours, at the order of a prosecuting official and whether or not they are called upon to give testimony, shall be compensated out of the General Fund on an hourly basis equal to that established by the State for their range and step level." The term "law enforcement officer" is further defined as "any person who by virtue of his public employment is vested by law with a duty to enforce any criminal law of this State by making arrests, whether that duty extends to all crimes or is limited to specific crimes, or with a duty to enforce any law of the State establishing a civil violation." 4 M.R.S.A. § 173(1). So, to be eligible for off-duty compensation under this section, the person's public employment must by law authorize him or her to make arrests or to enforce a civil violation.

Inspectors of the Bureau of Liquor Enforcement, have the duty and authority to enforce the provisions of Title 28 of the Maine Revised Statutes (liquors), the provisions of Title 17 M.R.S.A. chapter 69 (public drinking, etc.) and the provisions of 29 M.R.S.A. § 2182 (unlawful use of license or instruction permit), and may make arrests in furtherance of these powers. 28 M.R.S.A. § 59(2). Additionally, an inspector has the authority under 28 M.R.S.A. § 59(3) to arrest without a warrant any person who has committed or is committing any other crime in his presence, either at the time of the commission of the crime, or within a reasonable time thereafter, if the inspector has completed the basic training course for Liquor Inspectors at the Maine Criminal Justice Academy or if the necessity for such training has been waived by the Board of Trustees at the Academy. Thus, a Liquor Inspector falls within the ambit of the definition of "law enforcement officer" for purposes of 4 M.R.S.A. § 173.

The State Fire Marshal, his deputy and inspectors are empowered to enforce all the laws, ordinances, rules and regulations promulgated by the Department of Public Safety or enforceable by him directed toward and concerned with the protection of the public from certain named fire-related hazards. 25 M.R.S.A. § 2396. In addition, in carrying out these functions, the State Fire Marshal, his deputy and inspectors, are granted the power of arrest for the impersonation of or interference with them. 25 M.R.S.A. § 2396(7). Thus, since such officers have been granted the

power of arrest for at least one criminal violation;* they fall within the ambit of the definition of "law enforcement officer" for the purposes of 4 M.R.S.A. § 173.

Capitol Security Police officers "have the powers of arrest of a Sheriff in the Capitol Area, parks, grounds, buildings and appurtenances owned or leased by the State at the seat of government." 25 M.R.S.A. § 2908. They, therefore, fall within the definition of "law enforcement officer" 4 M.R.S.A. § 173.

Special Agent Investigators, Special Agents and other special investigators employed under the authority of 5 M.R.S.A. § 202 fit within the definition of "law enforcement officer" for the purposes of 4 M.R.S.A. § 173 since they are appointed by the Attorney General for the purpose of "detection, arrest and apprehension of persons who commit crime in this State." (emphasis added)

SUPERIOR COURT

Title 16 M.R.S.A. § 252 states "all law enforcement officers appearing at the order of a prosecuting official before the Superior Court or Grand Jury, whether or not called upon to give testimony, at times other than their regular working hours, shall be compensated on an hourly basis at their present rate of employment to be paid by the respective county treasurer." The term "law enforcement officer" is not defined in this section, or anywhere else in Title 16, as it is defined in 4 M.R.S.A. § 173, discussed above in relation to the District Court. Thus, it is impossible to determine from the face the statute the range of officials to which it was intended to apply.

Significantly, however, the words "law enforcement officer" were added, in 1975, to the section quoted above in the same bill which enacted the provision of 4 M.R.S.A. § 173(4), also quoted above, insuring that all "law enforcement officers" appearing in District Court during off-duty hours be compensated. P.L. 1975, c. 369, § § 2, 3. While the legislative history on the bill is silent as to the range of

* These officers are also given "the same enforcement powers...throughout the State as sheriffs have in their respective counties," 25 M.R.S.A. § 396(7), which powers include those of arrest. 30 M.R.S.A. § 121(7). However, in view of the specific limitations of their arrest powers contained in § 2396(7), it is questionable whether they have been granted the full arrest powers of sheriffs. But since it is clear that these officers enjoy some arrest powers, however limited, it is not necessary to resolve the issue of the full extent of their arrest powers to answer your questions.

persons to which the term "law enforcement officer" was to apply, it seems safe to assume that the Legislature did not intend for the phrase to have a different meaning with regard to Superior Court appearances than it had to District Court appearances.

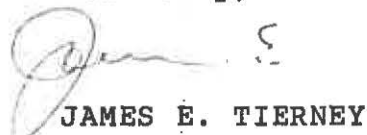
In the next year, however, the Legislature enacted the definition of the term "law enforcement officer", also quoted above, which appears in 4 M.R.S.A. § 173(1), as part of an omnibus bill revising the laws relating to the traffic courts of the State. P.L. 1975, c. 731, § 7 (1976). Again, the legislative history is silent as to the motive for this amendment, but again, is the absence of any expression of legislative interest to the contrary, it is difficult to conclude that the Legislature intended a different definition to apply to officers seeking compensation for appearances in District Court than those appearing in Superior Court.

Accordingly, as the duties of Liquor Inspectors, Fire Inspectors, Capitol Security Police Officers and Special Agent Investigators described above allow them to fit within the term "law enforcement officer" as defined in 4 M.R.S.A. § 173(1), we conclude that should such officers be ordered to appear in Superior Court by a prosecuting official at the time other than their regular working hours, they are entitled, pursuant to 16 M.R.S.A. §252, to be compensated on an hourly basis equal to their present rate of employment, such compensation to be paid by County Treasurer for the county in which the Superior Court is located.

This opinion in no way extends, enlarges or grants any powers of and to the named law enforcement officers. The express purpose of this opinion is the determination of whether these named law enforcement officers will be compensated for off-duty court appearances.

I hope this answers your questions. Please feel free to re-inquire if further clarification is necessary.

Sincerely,


JAMES E. TIERNEY
ATTORNEY GENERAL