

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 20, 1983

Richard B. Anderson, Commissioner
Department of Conservation
State House
Augusta, Maine 04333

Dear Commissioner Anderson:

You have inquired as to whether Rangers of the Bureau of Parks and Recreation endowed with police supervisory powers pursuant to 12 M.R.S.A. § 602(5) are employees of a law enforcement agency for purposes of 32 M.R.S.A. § 7166 (3)(A) and may therefore be required to take polygraph tests as a condition of their employment. For the reasons that follow, it is the opinion of this Department that such employees may be required to take polygraph tests.

Title 32 M.R.S.A. § 7166 (Supp. 1982) is that part of the Polygraph Examiners Act of 1979, 32 M.R.S.A. § 7151 et seq. (Supp. 1982), that regulates the use of polygraph testing in employment situations. Section 7166 provides in pertinent part:

1. Preemployment screening. No employer may, directly or indirectly, require, request or suggest that any applicant for employment submit to a polygraph examination as a condition of obtaining employment, or administer or cause to be administered to an applicant any such examination, or use or refer to the results of such an examination for hiring purposes....
2. Current employees. No employer may, directly or indirectly, require, request or suggest that any employee submit to a polygraph examination as a condition of

employment, or administer or cause to be administered to any employee any such examination, or use or refer to the results of such an examination for employment purposes.

3. Exceptions.

A. This section shall not apply to employees of or applicants for employment with law enforcement agencies....

Within the Polygraph Examiners Act, the Legislature did not define the term "law enforcement agency". Elsewhere, however, it has defined the term broadly, including all public agencies employing "law enforcement officers". See, e.g., 25 M.R.S.A. § 3701(1)(Supp. 1982). In the Criminal Code, the Legislature has defined the term "law enforcement officer" to include "any person who by virtue of his public employment is vested by law with a duty to maintain public order, to prosecute offenders, or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes." 17-A M.R.S.A. § 2 (17)(1983). See also 25 M.R.S.A. § 1542 (5)(Supp. 1982); 25 M.R.S.A. § 3701 (3)(Supp. 1982). The question, therefore, is whether Rangers of the Bureau of Parks and Recreation fall within this definition.

Title 12 M.R.S.A. § 602(5)(1981) empowers the Bureau:

[t]o exercise police supervision over all state parks and memorials. The agents or representatives of the Bureau of Parks and Recreation designated for that purpose by said bureau are authorized and empowered to arrest with or without warrant any person within the State who is committing, or to detain until a warrant has been obtained, any person within the State who has been seen by said agents or representatives committing any offense against the state laws, or any violation of any rule or regulation of the Bureau of Parks and Recreation within a state park or memorial....

Your Department has indicated that the Bureau has formally designated its Rangers as its representatives for this police supervision and expects them to perform the functions

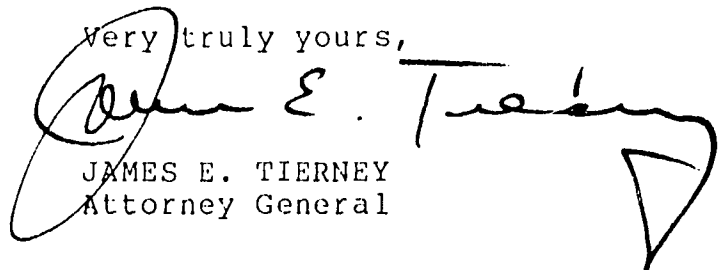
enumerated in 32 M.R.S.A. § 602 (5).¹ It follows, then, by employing Rangers for the purposes of 12 M.R.S.A. § 602 (5), the Bureau is a law enforcement agency.²

Public policy supports a reading of 32 M.R.S.A. § 7166(3)(A) to include the Bureau as a law enforcement agency when it acts through agents designated pursuant to 12 M.R.S.A. § 602(5). By enactment of § 7166(3)(A), the Legislature adopted the position that the polygraph should be available as an aid in maintaining the integrity and the internal discipline of law enforcement agencies. That position is consistent with recommended practices. See, e.g., National Advisory Commission on Criminal Justice Standards and Goals: Police, Standards 13.5 (4)(b) and 19.4 (6) (1973). Maintenance of the integrity and the internal discipline of the Bureau's Ranger Service in performance of its duties pursuant to 12 M.R.S.A. § 602 (5) is certainly as important as maintaining the integrity and internal discipline of other law enforcement agencies performing identical functions.

No opinion is here expressed as to what would constitute sufficient cause for utilizing the authority made available by 32 M.R.S.A. § 7166 (3)(A) or what procedural safeguards are required for utilizing such authority, since those questions are outside the scope of your inquiry.

I hope that this opinion is helpful. If this office can be of further assistance, please do not hesitate to contact me.

Very truly yours,



JAMES E. TIERNEY
Attorney General

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1. A statutory predecessor to Section 605 (5), Section 23 (IV) of Chapter 32 of the Revised Statutes of 1944, contained provisions virtually identical to Section 602 (5) but relating to the former State Park Commission. In advising the State Park Commission as to the import of Section 23 (IV), this office confirmed the section's grant of law enforcement functions. Op. Me. Atty Gen. (1945), reprinted in 1945-1946 Me. Att'y Gen Ann. Rep. 34-35.

2. No opinion is here expressed as to whether the Bureau is a law enforcement agency generally, i.e., with respect to personnel and functions without the scope of 12 M.R.S.A. § 602 (5).