

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

June 20, 1989

Honorable Rita B. Melendy
Maine House of Representatives
State House Station #2
Augusta, ME 04333

Dear Representative Melendy:

You have inquired into whether the immunity provisions of the Maine Nonprofit Corporation Act apply to the "incorporators" of Northeast Health, Inc., a nonprofit corporation which operates various institutional providers of health services in the Rockland area. For the reasons which follow, it is the opinion of this Department that the "incorporators" of Northeast Health, Inc. are immune from liability for their official acts.

Section 402(2) of the Maine Nonprofit Corporation Act, 13-B M.R.S.A. § 101 et seq., provides

The directors, officers, employees and members of the corporation shall not, as such, be liable on its obligations.

You indicate that the by-laws of Northeast Health, Inc., which is incorporated under the Act, contemplate a group of between 200 and 700 "incorporators" who are nominated by existing "incorporators," and who meet at least annually for the purpose of voting on the changes in the by-laws; choosing a smaller group of people known as the "Board of Trustees," which exercises operational authority over the various institutions within the corporation; and taking other appropriate action. Since the term "incorporator" is not included in the list of persons immune from liability set forth section 402(2), you

have introduced legislation to add the word "incorporator" to that section. Legislative Document 1769 (114th Legis. 1989).

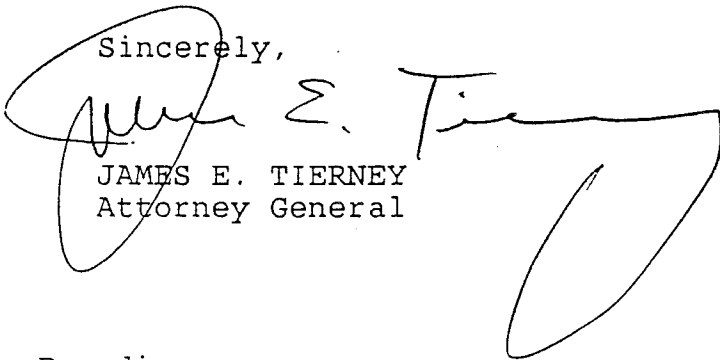
At the request of the Judiciary Committee, to which this legislation was assigned, you have asked whether the "incorporators" of Northeast Health, Inc. may be considered as already covered by section 402(2), thus obviating the need for your legislation. In the view of this Department, they are so covered. One of the classes of persons rendered immune by section 402(2) consists of "members of the corporation." The term member is defined by section 102(8) of the Act as follows:

'Member' includes persons by whatever name designated, including corporators, and means one having membership rights in a corporation in accordance with the provisions of its articles in a corporation or by-laws

According to the description with which you have provided this Department, the "incorporators" of Northeast Health, Inc. appear clearly to fit this definition. The office of "incorporator" is established by the by-laws of the corporation, and persons appointed to such office exercise membership rights in the corporation in that they are responsible for its general governance. Accordingly, they are immune for any actions taken in their official capacity, and there is no need to amend section 402(2) to include the word "incorporator" to cover them.^{1/}

I hope the foregoing answers your question. Please feel free to reinquire if further clarification is necessary.

Sincerely,



JAMES E. TIERNEY
Attorney General

JET:sw

cc: Senator Barry J. Hobbins
Representative Patrick E. Paradis
Co-Chairmen, Joint Standing Committee on the Judiciary

^{1/}Indeed, the inclusion of such a word would substantially increase the range of liability to persons not already covered, since the term "incorporator" is used elsewhere in the Maine Nonprofit Corporation Act to refer to persons who create the corporation in the first place.