

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

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House of Representatives, February 11, 1976

Reported by Mr. Cooney from Committee on State Government pursuant to H. P. 1741 and printed under Joint Rules No. 3.

EDWIN H. PERT, Clerk

Filed under Joint Rule 3 pursuant to H. P. 1741.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT to Amend the Rules for Legislative Investigating Committees.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 3 MRSA § 401, as enacted by PL 1975, c. 593, § 3, is amended to read:

§ 401. Short title and purpose

This Act may be called "Rules for Legislative Investigations." The purpose of this Act is to establish rules of fair procedure for legislative investigating committees in order to provide for the creation and operation of such committees in a manner which will enable them to properly exercise the powers and perform the duties delegated to them by the Legislature, including the conduct of hearings in a fair and impartial manner consistent with the protection of the fundamental constitutional rights of persons called to testify at such hearings.

Sec. 2. 3 MRSA § 402, sub-§ 1, 2nd sentence, as enacted by PL 1975, c. 593, § 3, is repealed and the following enacted in place thereof:

The chairman may be either the permanent chairman, elected by the affirmative votes of a majority of committee members, or another member designated by the permanent chairman to be temporary chairman in the absence of the permanent chairman.

Sec. 3. 3 MRSA § 402, sub-§ 4, as enacted by PL 1975, c. 593, § 3, is amended to read:

4. Investigating committee. An "investigating committee" is any committee of the Legislature which has been granted by the Legislature the power to administer oaths, issue subpoenas and take depositions, as authorized by section 165, subsection 7. "Investigating committee" shall include the Legislative Council when it exercises the authority granted under section 162, subsection 4 but shall not include the Committee on Legislative Ethics when it exercises the authority granted under section 381 A, subsection 2, paragraph D.

Sec. 4. 3 MRSA § 402, sub-§ 5, as enacted by PL 1975, c. 593, § 3, is repealed.

Sec. 5. 3 MRSA § 402, sub-§ 6, as enacted by PL 1975, c. 593, § 3, is amended to read:

6. Members. The "members" of an investigating committee are the legislators appointed by the Legislature to serve on the committee.

Sec. 6. 3 MRSA § 402, sub-§ 7, as enacted by PL 1975, c. 593, § 3, is amended to read:

7. Quorum. A "quorum" is a majority of the members of a the legislative investigating committee.

Sec. 7. 3 MRSA § 411, as enacted by PL 1975, c. 593, § 3, is amended to read:

§ 411. Creation

Whenever the Legislature delegates to a committee the power to administer oaths, issue subpoenas and take depositions in connection with any study or investigation, such committee shall automatically become an investigating committee for the purpose of such study or investigation and shall be subject to the provisions of this chapter, whether or not such power is utilized by the committee in the course of such study or investigation.

Sec. 8. 3 MRSA § 413, as enacted by PL 1975, c. 593, § 3, is amended to read:

§ 413. Number of members; makeup of committee

~~No~~ An investigating committee shall consist of fewer than at least 3 9 members. The membership of each such committee shall reasonably reflect the political composition of the Legislature. Whenever any action by the committee requires the presence of a quorum, or the affirmative votes of a majority of the members, the quorum or majority shall include members from more than one political party.

Sec. 9. 3 MRSA § 421, as enacted by PL 1975, c. 593, § 3, is repealed.

Sec. 10. 3 MRSA § 422, as enacted by PL 1975, c. 593, § 3, is repealed and the following enacted in place thereof:

§ 422. Order of procedure

The order of procedure in making a study or an investigation shall be established by the affirmative votes of a majority of the committee members.

Sec. 11. 3 MRSA § 423, as enacted by PL 1975, c. 593, § 3, is amended to read:

§ 423. Issuance of a subpoena

The decision to issue a subpoena shall be an investigating committee action require the affirmative votes of a majority of committee members. Subpoenas shall be signed by the chairman.

Sec. 12. 3 MRSA § 424, as enacted by PL 1975, c. 593, § 3, is repealed and the following enacted in place thereof:

§ 424. Notice of witnesses

1. **Subpoenaed witnesses.** Service of a subpoena requiring the attendance of a person to provide the committee with books, accounts, documents or other testimony shall be made in the manner provided for the service of subpoenas in civil actions in the Superior Court at least 10 days prior to the date of the hearing. Such subpoena shall include a listing of any specific matters within the scope of the investigation concerning which the testimony of the subpoenaed witness will be sought. Any person so served with a subpoena shall at the same time be served with a copy of the order, resolution or statute authorizing the investigation, a copy of the rules under which the committee functions, a notice that he may be accompanied at the hearing by counsel and a copy of that portion of the committee records pertaining to authorization of the issuance of his subpoena.

2. **Voluntary witnesses and interested parties.** Any voluntary witness or interested party who requests permission to testify before the committee shall be given, in advance of his appearance before the committee, a copy of the order, resolution or statute authorizing the investigation, a copy of the rules under which the committee functions and a notice that he may be accompanied at the hearing by counsel.

3. **Extensions of time.** Any subpoenaed witness may request in writing to the committee that he be granted additional time to prepare for his testimony before the committee. The committee may, upon the affirmative votes of a majority of the committee members, grant the request and establish a new date for his testimony.

Sec. 13. 3 MRSA § 425, as enacted by PL 1975, c. 593, § 3, is repealed.

Sec. 14. 3 MRSA § 426, 1st and 2nd sentences, as enacted by PL 1975, c. 593, § 3, are amended to read:

All testimony of subpoenaed witnesses shall be under oath or by affirmation. ~~A voluntary witness~~ Other witnesses may be required by the affirmative votes of a majority of the committee members to testify under oath by legislative committee action or by affirmation.

Sec. 15. 3 MRSA § 427, as enacted by PL 1975, c. 593, § 3, is amended to read:

§ 427. Testimony

Taking testimony shall be by the investigating committee's counsel, or other staff personnel or the members of the committee. A quorum shall be

present. Unless otherwise decided by ~~investigating committee action~~ the affirmative votes of a majority of committee members, upon the request of the witness, all testimony shall be taken in open session. ~~However, if any witness so requests, his testimony shall be taken in executive session, unless otherwise decided by investigating committee action~~ If a witness requests that his testimony be taken in executive session, the committee shall meet in executive session to hear the reasons for such request before voting in public session upon the request. Testimony taken in executive session shall be used in the report of the committee only upon the affirmative votes of a majority of the committee members.

Sec. 16. 3 MRSA § 428, as enacted by PL 1975, c. 593, § 3, is amended to read:

§ 428. Records

A complete record shall be kept of all ~~investigating committee action~~ proceedings, including ~~a transcript of~~ all testimony taken. Except as provided in sections 458 and 459, all such records shall be placed on file with the Secretary of the Senate at the conclusion of the investigation, and shall become public records at the conclusion of the biennium in which the investigating committee was created. Such records shall be retained by the Secretary of the Senate for that biennium, at which time the records shall be transferred to the Maine State Archives for disposition in accordance with procedures adopted by the State Archivist pursuant to Title 5, section 91, et seq.

Sec. 17. 3 MRSA § 429, as enacted by PL 1975, c. 593, § 3, is repealed and the following enacted in place thereof:

§ 429. Transcripts of testimony

Upon payment of the cost of preparation, any person may obtain a transcript of testimony taken in open session. No testimony taken in executive session shall be available in transcript form to the public. A witness, upon payment of the cost of preparation, may obtain a copy of his own testimony in executive session.

Sec. 18. 3 MRSA § 430, as enacted by PL 1975, c. 593, § 3, is repealed and the following enacted in place thereof:

§ 430. Suspected criminal activity

1. Warning. Prior to receiving the testimony of any witness, the chairman of the committee shall warn the witness of the provisions of subsection 2 and sections 453, 454 and 471.

2. Reporting. If in the course of the investigation, the investigating committee has cause to suspect any person of violating any provisions of Title 17 or Title 17-A, it shall, by the affirmative vote of a majority of its members, instruct the chairman of the committee to notify the Attorney General of the suspected violation.

Sec. 19. 3 MRSA § 451, 2nd sentence, as enacted by PL 1975, c. 593, § 3, is repealed.

Sec. 20. 3 MRSA § 452, as enacted by PL 1975, c. 593, § 3, is repealed.

Sec. 21. 3 MRSA § 453, as enacted by PL 1975, c. 593, § 3, is repealed and the following enacted in place thereof:

§ 453. Refusal to testify on constitutional or statutory grounds

During the time he is giving testimony, a witness may refuse to answer question addressed to him by the committee or to provide information or documents requested by the committee, which would, if answered or provided, violate the rights guaranteed him under the Federal Constitution or the Maine Constitution, or which would violate any personal privilege established by statute, or which is not within the scope of the investigation as this is defined and limited by the authorization for the investigation.

Sec. 22. 3 MRSA § 454, as enacted by PL 1975, c. 593, § 3, is repealed and the following enacted in place thereof:

§ 454. Refusal to testify on procedural grounds

A witness may refuse to testify before a committee or to provide requested information to a committee, if:

1. Makeup of committee. The committee is not constituted as required by section 413;

2. Subpoena. His subpoena was not issued in accord with the requirements of section 423 and section 424, subsection A; or

3. Quorum. A quorum of the committee is not present as required by section 427.

Sec. 23. 3 MRSA § 455, as enacted by PL 1975, c. 593, § 3, is repealed and the following enacted in place thereof:

§ 455. Television, films or radio broadcasts

The committee may decide by the affirmative votes of a majority of the members to televise, film or broadcast testimony taken in open session.

Sec. 24. 3 MRSA § 456, as enacted by PL 1975, c. 593, § 3, is repealed and the following enacted in place thereof:

§ 456. Forms of answers and statements

In giving testimony, the witness may briefly explain his answers or statements. The witness may insert in the record sworn, written statements of reasonable length relevant to the subject matter and scope of the investigation.

Sec. 25. 3 MRSA § 457, as enacted by PL 1975, c. 593, § 3, is repealed.

Sec. 26. 3 MRSA § 458, as enacted by PL 1975, c. 593, § 3, is amended to read:

§ 458. Rights of interested parties

Any interested party may request an opportunity to appear before the in-

investigating committee. The decision ~~on this~~ to grant such a request shall be ~~investigating committee action by the~~ affirmative votes of a majority of the committee members. If such request is granted, the interested party shall appear before the committee as a witness. If such request is not granted, that part of the testimony in which the interested party was specifically identified or which makes identification possible shall not be used in the report of the committee, shall be expunged from the records of the committee and shall not be the basis of, or be admissible as evidence in proceedings relating to any criminal charge against such person.

Sec. 27. 3 MRSA § 459 is enacted to read:

§ 459. Rights of persons referred to in executive session testimony

If any person is specifically identified in testimony taken before an investigating committee in executive session, the committee shall notify such person by registered mail or personally that he has been so identified and shall provide in the notice a transcript of the testimony relating to him. Such person may within 10 days of receipt of notice request an opportunity to appear before the committee as an interested party. If the person is not notified as provided in this section, or if his request to appear before the committee is not granted as provided in section 458, that part of the testimony in which the witness was specifically identified or which makes identification possible shall not be used in the report of the committee, shall be expunged from the records of the committee and shall not be used as the basis of, or be admissible as evidence in proceedings relating to any criminal charge against such person.

Sec. 28. 3 MRSA c. 21, subchapter V, as enacted by PL 1975, c. 593, § 3, is repealed and the following enacted in place thereof:

SUBCHAPTER V.

IMMUNITY AND ENFORCEMENT

§ 471. Immunity

An investigating committee may, upon the affirmative votes of a majority of the committee, grant a witness use immunity for any testimony to be given before the committee. If the committee grants the witness immunity, no testimony required of the witness under the immunity grant shall be used to subject the witness to any criminal proceeding or any penalty or forfeiture, nor shall such testimony be competent testimony in any criminal proceeding against the witness in any court, except upon a prosecution for perjury or a similar offense committed in giving the testimony. If an investigating committee shall grant immunity to a witness, the chairman shall immediately notify the Attorney General of the immunity granted.

§ 472. Legislative responsibility

The Legislature has the responsibility for insuring adherence to these rules.

STATEMENT OF FACT

The purpose of this Act is to clarify the provisions governing legislative investigating committees. Aside from changes in language to clarify the present statute, the following substantive changes are made:

1. The investigating committee is enlarged and must reasonably reflect the political composition of the Legislature.

2. The methods for notifying and subpoenaing witnesses are set out in detail.

3. The provisions regarding open and executive sessions are set out in detail, providing for media coverage of open session and public access to any testimony in open session; but also providing for witness protection by executive sessions with limited release of testimony and expungement provisions and by providing protection for those identified by testimony of others.

4. A provision allowing the committee, after having warned the witness giving testimony, to report suspected criminal activity to the Attorney General.

5. The witness is given specific constitutional, statutory and procedural grounds on which he may refuse to testify.

6. The investigating committee is given the authority to grant limited immunity from criminal prosecution in order to receive potentially incriminating testimony.

7. The enforcement of these provisions, including the compelling of testimony and the determination of valid witness objections, is by action of the Legislature through its own authority. The sections that require Superior Court enforcement are removed.