Maine State Legislature

OFFICE OF POLICY AND LEGAL ANALYSIS

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October 29, 2003

To: File
Fr: Deb Friedman, Legislative Analyst

Re: Grant of subpoena powers to a legislative committee

Attached is a copy of the statutes relating to a grant of subpoena powers to a legislative committee, as well as pages from the 1985 report of the Joint Select Committee to Investigate Public Utilities, which was apparently the last time a committee was given subpoena powers. Some key aspects of the process are as follows:

1. The Legislature would need to pass a Joint Order clearly specifying the subject matter and scope of the study or investigation.

2. A committee that has subpoena powers is automatically considered an investigating committee, and is subject to the provisions of Title 3, chapter 21.

3. Funds would needed to be provided to pay for the recording and transcribing of meetings, witness fees, and for staff to the study committee (The 1985 study committee hired outside staff including a staff director, Majority Counsel, Assistant Majority Counsel, Minority Counsel, Special Counsel and a Committee Assistant)

4. The procedures regarding notice, right to counsel and other procedures are specified in Title 3, chapter 21.

The 1985 study was the most recent study for which subpoena powers were granted. A committee investigating the death of patients at AMHI sought such power in the 1990's, but the Legislature was not in session at the time. The only other grant of which we are aware occurred in January of 1970, when the Legislature adopted a joint resolution creating and giving such powers to a Special Interim Legislative Committee to look at loan guarantees granted to the sugar-beet and potato-processing industries in Maine by a quasi-governmental agency.

Some people believe that the Judiciary Committee used subpoena powers to get access to records relating to abuse at the Governor Baxter School for the Deaf. That access was not obtained through subpoena, but through enactment of legislation specifically giving the Judiciary Committee access to particular records held by governmental authorities relating to abuse. (119th Legislature, LD 2354; P&S 1999, chapter 62).

TITLE 3

§162. Authority

The Legislative Council shall have the authority:

4. Oaths, subpoenas and depositions. To administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents and testimony, and to cause the deposition of witnesses, whether residing within or without the State to be taken in the manner prescribed by law for taking depositions in civil actions in the Superior Court. In case of disobedience on the part of any person to comply with any subpoena issued in behalf of a committee, or on the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, it shall be the duty of the Superior Court of any county, on application of a member of a committee, to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. Each witness, other than a state officer or employee, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid upon the presentation of proper vouchers sworn to by such witness and approved by the chairman of the council;

§165. Joint committees, authority

The Legislature may by rule establish such joint standing committees and joint select committees as it deems necessary. Such committees shall have the authority, both when the Legislature is in session and when it is not in session:

7. Other subpoenas, etc. When the duties assigned to a committee so require, the Legislature may grant to it the power to administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents and testimony, and to cause the deposition of witnesses, whether residing within or without the State to be taken in the manner prescribed by law for taking depositions in civil actions in the Superior Court. When the Legislature grants this power to a joint standing committee or joint select committee, such committee shall function as an investigating committee and shall be subject to the provisions of chapter 21. No appropriation or allocation may be made for a specific study unless the Legislative Council has first approved a budget adopted by the joint standing committee which is to conduct the study. No appropriation or allocation may be made for the operation of any joint select committee unless the Legislative Council has first approved a budget adopted by the joint select committee. In case of disobedience on the part of any person to comply with any subpoena issued in behalf of a committee, or on the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, it shall be the duty of the Superior Court of any county, on application of a member of a committee, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. Each witness, other than a state officer or employee, who appears before a committee by its order or subpoena shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid upon the presentation of proper vouchers sworn to by such witness and approved by the chairman of the committee;

CHAPTER 21
LEGISLATIVE INVESTIGATING COMMITTEES

SUBCHAPTER 1
GENERAL PROVISIONS

§401. Short title

This Act may be called "Rules for Legislative Investigations."

§402. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Chairman. The "chairman" is the presiding officer of the investigating committee. He may be the permanent chairman or another member designated as temporary chairman in the absence of the chairman.

2. Executive session. An "executive session" is a session at which only members of the investigating committee, staff of the committee, counsel to the committee, the witness and his counsel shall be present.

3. Interested party. An "interested party" is any person who learns that he has been specifically identified in testimony taken before an investigating committee and who reasonably believes that he has been adversely affected by such testimony.

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 Commission on Governmental Ethics and Election Practices when it exercises the authority granted under Title 1, chapter 25.

5. Investigating committee action. An "investigating committee action" is any decision arrived at formally by an investigating committee.

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

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

8. Testimony. "Testimony" is any form of evidence received by an investigating committee.

9. Witness. A "witness" is any person who testifies before an investigating committee or who gives a deposition. "Witness" shall include an interested party who requests permission to testify.

SUBCHAPTER 2
LEGISLATIVE INVESTIGATING COMMITTEES

§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.

§412. Scope of study or investigation

The authorization creating an investigating committee shall clearly state, and thereby limit, the subject matter and scope of the study or investigation. No investigating committee shall exceed the limits set forth in such authorization.

§413. Number of members

No investigating committee shall consist of fewer than 3 members.

§414. Oversight of expenditures

The Legislative Council shall provide oversight of expenditures for legislative investigating committees in the same manner as it provides oversight of joint select committees pursuant to chapter 7.

SUBCHAPTER 3
RULES OF PROCEDURE FOR LEGISLATIVE INVESTIGATING COMMITTEES

§421. Investigating committee action

Any investigating committee action shall require the affirmative votes of a majority of the committee members.

§422. Order of procedure

The decision as to the order of procedure in making a study or an investigation shall be an investigating committee action.

§423. Issuance of a subpoena

The decision to issue a subpoena shall be an investigating committee action.

§424. Notice to witnesses

A reasonable time before they are to testify, all prospective witnesses shall be notified of the subject matter of the investigation and shall be provided with a copy of this chapter. When a subpoena is served, the information required by this section shall be presented at the time of service.

§425. Notice to members

Notice of the date and time of any meeting of the committee and of any hearing to be held by the committee shall be given to all members of the investigating committee at least 3 days in advance.

§426. Oaths

All testimony of subpoenaed witnesses shall be under oath. A voluntary witness may be required to testify under oath by legislative committee action. Oaths shall be administered by the chairman.

§427. Testimony

Taking of 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, all testimony shall be taken in open session. However, if any witness so requests, his testimony shall be taken in executive session, unles otherwie decided by investigating committee action.

§428. Records

A complete record shall be kept of all investigating committee action, including a transcript of all testimony taken.

§429. Release of testimony

1. Release. The decision to release testimony and the decision as to the form and manner in which testimony shall be released shall be investigating committee action. However, no testimony shall be released without first affording the witness who gave such testimony, or his counsel, an opportunity to object to the proposed release.

A. The witness or his counsel may, by such objection, require that testimony given in open session, if it is released at all, be released in the form of a full, consecutive transcript.

B. The witness or his counsel may, by such objection, require that testimony given in executive session not be released in any form or manner whatsoever.

2. Transcript. The witness or his counsel, upon payment of the cost of preparation, shall be given a transcript of any testimony taken. However, the witness or his counsel shall not be entitled to obtain a transcript of the executive session testimony of other witnesses. The release of

a transcript under this subsection is not the release of testimony within the meaning of subsection 1.

§430. Request for court to compel obedience

The decision to apply to the Superior Court to compel obedience to a subpoena issued by the committee shall be by investigating committee action.

SUBCHAPTER 4
RULES GOVERNING WITNESSES

§451. Counsel

The witness may have counsel present to advise him at all times. The witness or his counsel may, during the time the witness is giving testimony, object to any investigating committee action detrimental to the witness' interests and is entitled to have a ruling by the chairman on any such objection.

§452. Questioning of adverse witnesses

The witness or his counsel may question adverse witnesses whose testimony is being taken in open session. However, the chairman of the investigating committee may reasonably limit the right to so question. The chairman's ruling is final, unless otherwise decided by investigating committee action.

§453. Pertinency of requested testimony

The witness or his counsel may challenge any request for his testimony as not pertinent to the subject matter and scope of the investigation, in which case the relation believed to exist between the request and the subject matter and scope of the investigation shall be explained.

§454. Who can compel testimony

The committee chairman may direct compliance with any request for testimony to which objection has been made. However, the chairman's direction may be overruled by investigating committee action.

§455. Television, films, radio

Any decision to televise, film or broadcast testimony shall be investigating committee action. If the witness or his counsel objects to a decision to televise, film or broadcast his testimony, his testimony shall not be televised, filmed or broadcast.

§456. Statements and form of answers

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

§457. Privileges

The witness shall be given the benefit of any privilege which he could have claimed in court as a party to a civil action, provided that the committee chairman may direct compliance with any request for testimony to which claim of privilege has been made. However, the chairman's direction may be overruled by investigating committee action.

§458. Rights of interested parties

Any interested party may request an opportunity to appear before the investigating committee. The decision on this request shall be investigating committee action. If such request is granted, the interested party shall appear before the committee as a witness.

SUBCHAPTER 5
SANCTIONS FOR ENFORCEMENT OF RULES

§471. Legislative responsibility

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

§472. Erroneously compelled testimony

Testimony compelled to be given over a proper claim of privilege, or testimony released in violation of section 429, or any evidence obtained as a result of such improper procedure is not admissible in any subsequent criminal proceeding.

§473. Contempt

No witness shall be punished for contempt of an investigating committee unless the court finds:

1. Conduct. That the conduct of the witness amounted to contempt;

2. Certain requirements. That the requirements of sections 424, 430, 453 and 454 have been complied with; and

3. Citations. That in the case of:

A. A citation for failure to comply with a subpoena, the requirements of section 423 have been complied with;

B. A citation for failure to testify in response to a request for his testimony challenged as not pertinent to the subject matter and scope of the investigation, the requirements of sections 412 and 453 have been complied with and the request was pertinent as explained;

C. A citation for failure to testify in response to a request for his testimony on grounds of privilege, the requirements of section 457 have been complied with.

§474. Saving clause

A decision by a witnesss to avail himself of any protection or remedy afforded by any provision of these rules shall not constitute a waiver by him of the right to avail himself of any other protection or remedy.

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STATE OF MAINE

112th LEGISLATURE

REPORT

OF THE

JOINT SELECT COMMITTEE

TO INVESTIGATE PUBLIC UTILITIES

MARCH 28, 1985

JOINT SELECT COMMITTEE TO INVESTIGATE PUBLIC UTILITIES

111th Legislature

Senate	House
John Baldacci, District 25 Chair	David B. Soule, Westport, Chair
Peter Danton, District 4	John L. Martin, Eagle Lake
Charlotte Z. Sewall, District 20	Edward C. Kelleher, Bangor
	Carol Allen, Washington
	Nathaniel J. Crowley, Sr. Stockton Springs
	Patricia M. Stevens, Bangor
	Linwood Higgins, Scarborough
	E. Christopher Livesay, Brunswick
	Ralph M. Willey, Hampden
	Donald F. Sproul, Augusta

112th Legislature

John Baldacci, District 10, Chair	Nathaniel J. Crowley, Sr. Stockton Springs, Chair
Michael Carpenter, District 3	John L. Martin, Eagle Lake
Charlotte Z. Sewall, District 20	Carol Allen, Washington
	Patricia M. Stevens, Bangor
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	Edward J. Kane, So. Portland
	Linwood Higgins, Scarborough
	Ralph M. Willey, Hampden
	Donald F. Sproul, Augusta
	Philip C. Jackson, Harrison

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In 1982, the Maine Public Utilities Commission (PUC) began an investigation of Central Maine Power Company and the actions of several of its senior officers and subsidiaries. The PUC staff investigation led to a contempt citation by the Public Utilities Commission and a criminal proceeding by the Maine Attorney General. The Public Utilities Commission wrote to the Speaker of the House stating that:

> The first question was to what extent did the Commission examine CMP's involvement in the political process.
>
> Our response was that the Commission conducted no extensive examination of CMP's involvement in the political process.
>
> Second question was what limits, if any, constrained the Commission's inquiry into CMP's involvement in the political process.
>
> Our answer was the primary limitations were those imposed by the PUC priorities and the resources available to conduct the investigation.

The Public Utility Commission in the final report of its investi gation said:

The general purposes of this investigation were to delineate the full set of events surrounding Mr. Scott's false testimony, and to discuss those events in relation to expected standards of performance by Maine public utilities in their relationships to the Public Utilities Commission. We have also had to establish that the conduct in question and its ramifications should not be paid for by Central Maine Power Company's electrical customers. Having accomplished those tasks, we have not investigated the implications of these events for the Maine political process. While such an investigation is desirable, it is not within our statutory mandate.

Among the items giving rise to concern regarding political involvement are the following:

First, the company has made the results of some of its surveys available to political candidates. The furnishing of such information is obviously of value and of benefit.

Second, both the company's polling consultant, Command Research, and one of its leading media advisors, Ad Media, are actively involved as political consultants as well.

There are apparently no restrictions on the extent to which information generated in the course of the many political questions asked as part of Atlantic Research's polling operations, albeit paid for by the stockholders rather than the customers, could be shared with political candidates. To the extent this was done, it would reduce the need for polling expenditures by the candidates themselves.

Third, company employees have functioned as phone callers on a systematic basis in the taking of polls with political as well as utility significance.

Fourth, on at least one occasion, the November 1982 elections, Central Maine Power Company employees were told to do interviewing of voters as they left the polls at several locations in the state. The purposes, scope, funding, and beneficiaries of these exit interviews are largely beyond the scope of our investigation. However, it is obvious that the cost of such an operation, although trivial in terms of CMP's $401 million 1982 operating revenues, are substantial by political standards.

LEGISLATIVE BASIS

The Legislature's response to the Public Utilities Commission's letter and Order was to consider the assumption of responsibility for completion of this task. Creation of the Joint Select Committee to Investigate Public Utilities was authorized by the 111th Legislature of the State of Maine through Legislative Joint Order 643 enacted on September 7, 1983.

During consideration of the Joint Order several issues were addressed in floor debate. The Legislature mandated through the Joint Order a thorough and comprehensive investigation of the nature and extent of the participation of regulated public utilities, directly or indirectly, in the political processes and activities of the State of Maine, and to investigate attempts by regulated public utilities to influence these processes, to determine if ratepayer funds had been used to support such activities, and to determine whether there existed reason to believe that violations of electoral statutes or utility regulations had occurred. This report was mandated by that Joint Order.

The Joint Order reads in part:

> "...the Legislative Council shall appoint itself, a joint standing committee or a joint select committee, as a legislative investigating committee to investigate and report on the following matters:
>
> 1.The nature of the relationship of public utilities to their subsidiaries, affiliates, officers, employees and persons or organizations providing contractors services to them, with particular attention to the larger utilities;

2.The nature and extent of the participation of public utilities, either directly, indirectly or through their subsidiaries, affiliates, political action committees, officers, employees or contractors, in political processes and activities, including both referenda campaigns and election campaigns;

3.Whether that political participation has involved violations by public utilities or other persons of laws relating to elections, registration of voters, initiatives and referenda, campaign reports or finances, or other political or election activities or practices;

4.The relationship of that political participation and the regulation of utilities;

5.Whether ratepayers' money has been used directly or indirectly to affect the regulation of public utilities;

6.The ability of the commission to properly and thoroughly investigate, monitor and report on the matters set forth above; and

7.The adequacy of the present laws governing public utility regulation and elections to properly reveal and regulate the political participation of utilities; and be it further

> Ordered, that to carry out this investigation, the Legislature grants to this committee all the powers and authority of a legislative investigating committee. The committee may hire legal counsel and staff as necessary;..."

The Joint Select Committee to Investigate Public Utilities was constituted by the Legislative Council on October 5, 1983. Appointed to the Committee were Senators John Baldacci, Peter Danton, and Charlotte Sewall, Representatives Carol Allen, Nathaniel Crowley, Linwood Higgins, Edward Kelleher, John Martin, David Soule, Donald Sproul, Pat Stevens, and Ralph Willey. Senator Baldacci and Representative Soule were appointed as Senate and House Chairmen.

It was clear to the Chairmen that the task before the Committee was broader in scope and complexity than the Public Utilities Commission staff investigation and the Attorney General's investigation. These focused respectively on the activities of Central Maine Power Company as they related to the Scott Affair and the actual conduct of Robert Scott. Questions of actual behavior, questions of violations of law, issues of utility regulation and cost accounting, and an examination of the interrelationships of political processes and utility behavior all had to be addressed. This meant that the Committee had to have available diverse skills in many areas.

Initial discussions among the Committee Co-Chairmen, the Legislative Council, the Public Utilities Commission and the Attorney General established several basic facts:

1. The Legislature did not have the internal resources available to provide staff support to the investigating committee without reducing the support available to the standing committees of the Legislature;

2. The Public Utilities Commission, which was itself an object of the probe, was not an appropriate source for staff support;

3. The current Attorney General was unwilling to follow the precedent of the Sugar Industry investigation and would not provide legal support to the investigating committee;

4. There were serious legal issues that would have to be addressed in the first major legislative investigation in over 70 years.

STATUTORY BASIS

Investigating committees of the Maine Legislature are provided with both statutory authorities and statutory obligations. The basic authorities are found in the Revised Statues, Title 3, section 162, subsection 4; section 165, subsection 7; and sections 401, et seq. These sections provide that the Legislature may delegate to a committee investigative powers (section 411) including the administering of oaths, issuing subpoenas and taking depositions (sections 162, subsection 4; 165, subsection 7, 423, 426, and 427). Such committees must have a clearly stated subject matter and scope of investigation (section 412). Investigating committees must consist of at

least three members (section 413) and take investigating committee actions by majority vote (section 421). Orders of procedure, issuance of subpoenas, decisions to apply to the Superior Court to com pel obedience to a subpoena, other procedural matters and votes to appeal rulings of the Chairman are investigating committee actions (sections 422, 423, 429, 430, 452, 454, 455, 457, and 458). Witnesses may be compelled to appear before investigating committees (section 424). Witnesses are entitled to have counsel advise them (section 451). Requests for testimony may be challenged as not pertinent to the subject matter and scope of the investigation (section 453). In such cases, after an explanation of the relationship believed to exist between the request and the subject matter and scope of the investigation, the chairman may direct compliance (sections 453 and 454). Witnesses may claim benefits of any privilege which could be claimed in a civil court action, although the chairman may direct compliance (section 457). Safeguards against improperly compelled testimony or improperly obtained evidence are contained in (section 472). Finally, contempt authority is vested in such Committees (section 473).

*1 264 A.2d 1

Supreme Judicial Court of Maine.

MAINE SUGAR INDUSTRIES, INC. and Vahising, Inc.
v.
MAINE INDUSTRIAL BUILDING AUTHORITY and Special Interim Legislative Committee, Intervenor.
March 31, 1970.

Two corporations brought action for declaratory judgment and injunctive relief against the Maine Industrial Building Authority, and Special Interim Legislative Committee intervened. The Supreme Judicial Court, Webber, J., held that statute dealing with secrecy of information furnished to Industrial Building Authority by borrowers whose loans are guaranteed by Authority must be construed as prohibiting voluntary disclosure by Authority but not as prohibiting mandatory disclosure either when required by court of compentent jurisdiction or when required by Special Interim Legislative Committee.

Judgment adverse to corporations.

West Headnotes

[1] Declaratory Judgment ⚿124.1
118A ----
118AII Subjects of Declaratory Relief
118AII(E) Statutes
118Ak124 Statutes Relating to Particular Subjects
118Ak124.1 In General.

(Formerly 118Ak124)
Where corporations which had received loans guaranteed by Industrial Building Authority contended that information supplied by it under statute was secret and could not be supplied to Special Interim Legislative Committee, and Committee contended otherwise, corporations could maintain declaratory judgment action for interpretation of statute. 10 M.R.S.A. § 852; 14 M.R.S.A. §§ 5951-5963.

[2] Declaratory Judgment ⚿62
118A ----
118AI Nature and Grounds in General
118AI(D) Actual or Justiciable Controversy
118Ak62 Nature and Elements in General.
When complainant makes claim of right buttressed by sufficiently substantial interest to warrant judicial protection and asserts it against defendant having adverse interest in contesting it, a "justiciable controversy" exists so that declaratory judgment action can be maintained. 14 M.R.S.A. §§ 5951-5963.

[3] Declaratory Judgment ⚿122.1
118A ----
118AII Subjects of Declaratory Relief
118AII(E) Statutes
118Ak122 Statutes in General
118Ak122.1 In General.

(Formerly 118Ak122)
Declaratory judgment statutes should be liberally construed to permit consideration by Supreme Judicial Court of statutory amendment before its effective date. 14 M.R.S.A. §§ 5951-5963.

[4] States ⚿84
360 ----

360II Government and Officers
360k84 Corporations Controlled by State.
Statute dealing with secrecy of information furnished to Industrial Building Authority by borrowers whose loans are guaranteed by Authority must be construed as prohibiting voluntary disclosure by Authority but not as prohibiting mandatory disclosure either when required by court of competent jurisdiction or when required by Special Interim Legislative Committee. 10 M.R.S.A. § 852.

[5] States ⚷39.5
360 ----
360II Government and Officers
360k24 Legislature
360k39.5 Investigations.

(Formerly 360k391/2)
The legislature has power to exact information in aid of the legislative function.

[6] Contracts ⚷167
95 ----
95II Construction and Operation
95II(A) General Rules of Construction
95k167 Existing Law as Part of Contract.
Where statute was in existence before contract, contract was required to be construed in light of statute.

[7] States ⚷84
360 ----
360II Government and Officers
360k84 Corporations Controlled by State.
"Governmental agency" in form providing that information provided to Industrial Building Authority by borrower whose loan is guaranteed by Authority shall not be disclosed to "government agency" without express written permission does not include the legislature or a committee acting for it. 10 M.R.S.A. § 852.
[8] States ⚷84
360 ----
360II Government and Officers
360k84 Corporations Controlled by State.
It is beyond power and authority of Industrial Building Authority to foreclose proper legislative action by any agreement it may seek to make.

***2** William R. Flora, Presque Isle, Roger M. Dougherty, and James M. O'Neill, Washington, D. C., for plaintiffs.

George A. Wathen, Augusta, for defendant.

Jon R. Doyle, Asst. Atty. Gen., Augusta, for intervenor.

Before WILLIAMSON, C. J., and WEBBER, MARDEN, DUFRESNE, WEATHERBEE, and POMEROY, JJ.

WEBBER, Justice.

This was a complaint for declaratory judgment and injunctive relief reported upon agreed facts.

The two plaintiffs are corporations doing business in Maine. Both have substantial loans guaranteed by defendant Maine Industrial Building Authority, a body corporate and politic created by Act of the Legislature with power to sue and be sued. 10 M.R.S.A., Secs. 701 to 703 inc., Secs. 751 to 754 inc., Secs. 801 to 809 inc., and Secs. 851 and 852, all as amended.

Sec. 753 as amended by P.L.1968, Ch. 525, Sec. 8 provides:

'The Maine Industrial Building Authority is authorized to insure the payment of mortgage loans, secured by eligible projects, and to this end the faith and credit of the State is pledged, consistent with the terms and limitations of the constitution of the State of Maine, Article IX, section 14-A.'

Sec. 801 provides a 'non-lapsing, revolving fund,' initially $500,000, to be used in part for the payment of 'interest and principal payments required by loan defaults.' The supporting provision of the Constitution of Maine, Article IX, Sec. 14-A provides:

'For the purposes of fostering, encouraging and assisting the physical location, settlement and resettlement of industrial, manufacturing, fishing and agricultural enterprises within the State, the Legislature by proper enactment may insure the payment of mortgage loans on the real estate and personal property within the State of such industrial, manufacturing, fishing and agricultural enterprises not exceeding in the aggregate $40,000,000 in amount at any one time and may also appropriate moneys and authorize the issuance of bonds on behalf of the State at such times and in such amounts as it may determine to make payments insured as aforesaid. * * *.'

Sec. 702 of 10 M.R.S.A. as amended sets forth the purpose of the several statutes dealing with the Maine Industrial Building Authority in these terms:

'It is declared that there is a state-wide need to provide enlarged opportunities for gainful employment by the people of Maine and to thus insure the preservation and betterment of the economy of *3 the State and its inhabitants. It is further declared that there is a need to stimulate a larger flow of private investment funds from banks, investment houses, insurance companies and other financial institutions including pension and retirement funds, to help finance industrial expansion of industrial, manufacturing, fishing and agricultural enterprises. The Maine Industrial Building Authority is created to encourage the making of mortgage loans for the purpose of furthering expansion of such enterprises in the State.'

The above excerpts make it abundantly clear that the Legislature is involved in and has a legitimate concern for the scheme of guaranteed loans which it has created. On January 22, 1970 the Senate adopted, the House concurring on January 23, 1970, a joint resolution which provided:

'WHEREAS, it is reported that many growers supplying Maine Sugar Industries and its affiliates have not been paid for their 1969 crop; and

WHEREAS, the Town of Easton has refused to waive any more property taxes of the Maine Sugar Industries plant there; and

WHEREAS, five other Aroostook communities have also refused to grant abatements on Maine Sugar Industries loading stations; and have not received payments for taxes due; and

WHEREAS, the Maine Industrial Building Authority, which has guaranteed $10,000,000 in loans to said industry has been requested to extend the term for payments; and

WHEREAS, a moratorium for the payment of principal and interest has already been granted by the Economic Development Administration to said industry for outstanding obligations; and

WHEREAS, there are recorded against Maine Sugar Industries and/or Vahlsing, Inc. certain liens and attachments in connection with unpaid claims; and

WHEREAS, said industry is in arrears on rent due the Aroostook Development Corporation; and

WHEREAS, these facts combine to create grave concern lest the structure of government loans, state credit and local concessions involved in the operation of Maine Sugar Industries may be in serious jeopardy and raise the question of whether further legislative action is necessary to protect the credit, peace, health and safety of the

State; and

WHEREAS, the same is of immediate and vital interest to Maine taxpayers and the Maine Legislature because of the guarantee of the Maine Industrial Building Authority supported by the full faith; now therefore, be it

ORDERED, the House concurring, that a Special Interim Legislative Committee be created consisting of 3 members on the part of the Senate, appointed by the President of the Senate, and 6 members on the part of the House, appointed by the Speaker of the House. The Committee shall by a majority vote elect a chairman. The Committee is directed, in conjunction with the office of the Attorney General of the State of Maine, and with the full and complete cooperation of all state departments, to investigate fully and completely the facts surrounding the approval of said guarantees, the loans and the present financial problems, including but not limited to, the circumstances and facts of the applications, all assurances and representations connected therewith, the events and documents supporting said representations upon which the Maine Industrial Building Authority acted relating to the sugar beet and potato-processing industry in the State, and all corporate entities involved; in order that the Legislature may determine whether further legislative action is necessary to protect the credit, peace, health and safety of the ***4** State. The Chairman, or any member of the Committee designated by him, shall have the power to administer oaths and to subpoena and require the attendance of witnesses and production of books, papers, records and other evidence pertinent to such investigation. In case of the refusal of any person to reply to any subpoena issued hereunder, or to testify to any matter to which he may be examined, the Superior Court in any county on application may issue an order requiring such person to comply with such subpoena and to testify. Any failure to obey such order may be punished by the Court as a contempt thereof. The Committee shall report its findings together with any proposed recommendations for legislative action to the Legislative Research Committee or the next regular session of the Maine Legislature, and therefor hereby appropriate from the Legislative Appropriation for said purpose a sum not exceeding $75,000.'

The Special Committee has organized and is proceeding to carry out the duties assigned to it by the joint resolution. At the time this complaint was initiated it was anticipated that it would hold a hearing on February 26, 1970 at which it would make inquiry of the Authority with respect to pertinent information supplied to it by the plaintiffs. On the report of this case, by agreement of the parties and without the intervention of any restraining order or injunction, such inquiry has been deferred pending decision of the Law Court.

The plaintiffs look to provisions of 10 M.R.S.A., Sec. 852 as amended as establishing a complete bar to the proposed inquiry to be addressed to the Authority. It is therein stated:

'No member of the authority, agent or employee thereof shall divulge or disclose any information obtained from the records and files or by virtue of such person's office concerning the name of any lessee or tenant or information supplied by any lessee, tenant, mortgagee or local development corporation in support of an application for mortgage insurance. Annual returns filed with the authority by a mortgagee, lessee, tenant or local development corporation shall be privileged and confidential.'

At its special session convened in January, 1970 the Legislature enacted P.L.1969, Ch. 584, Sec. 1 which will become effective May 9, 1970 and which amends 10 M.R.S.A., Sec. 852 by adding the following paragraph thereto:

'Nothing in this section shall be construed to prohibit the disclosure of information from records or files of the authority or the production of records or files of the authority to a special interim legislative investigating committee, or its agent, upon written demand from the chairman of the committee or any member of the committee designated by him. Such information, records or files may be used only for the lawful purposes of the committee and in any actions arising out of investigations conducted by it.'

We are asked to declare the rights and obligations of the parties which flow from Sec. 852 both before and after the amendment becomes effective.

[1][2] All parties join in asserting that issues are presented which can and should be determined by declaratory judgment pursuant to the provisions of 14 M.R.S.A., Secs. 5951 to 5963 inc. With respect to the interpretation of 10 M.R.S.A., Sec. 852 as amended we have no difficulty in agreeing with contentions of counsel. In Jones v. Maine

State Highway Commission (Me., 1968) 238 A.2d 226, 228 we had occasion to consider the scope of the declaratory judgment statute. We said, 'The line between a set of facts which lead only to an advisory opinion or a moot question and those which lead to a justiciable issue is not clearly fixed, but it may be said that when a complainant makes a claim of right butressed by a sufficiently substantial interest to warrant judicial protection and asserts it against a defendant having an adverse ***5** interest in contesting it, a justiciable controversy exists. The presence of what the court concludes is an important public issue, may be the determining factor in recognizing a taxpayer's interest as sufficient to warrant acceptance of jurisdiction.' (Emphasis supplied.) We have here 'an important public issue' as well as the usual requirements for declaratory judgment. Plaintiffs properly seek to ascertain the protective limits of Sec. 852. The Authority needs and is entitled to know whether it can properly divulge information and the Special Committee is equally entitled to know what if anything it can properly request or demand in the way of information supplied by plaintiffs to the Authority.

[3] Opposing counsel also unanimously and emphatically assert that the Court may and should declare the effect of the amendment not to become effective until May 9, 1970. We have not heretofore had occasion to consider this problem. In Acme Finance Co. v. Huse (1937) 192 Wash. 96, 73 P.2d 341 in a careful and well reasoned opinion, the Court concluded that it was authorized to declare the rights of parties in the form of a declaratory judgment with respect to a statute which, although duly enacted, had not then become effective. The facts that defendants would enforce the law against plaintiff after its effective date and that alleged rights of plaintiff would be thereby affected were held adequate to fulfill the requirement that a justiciable controversy must exist. Reaching the same conclusion in Department of Financial Institutions v. General Finance Corp. (1949) 227 Ind. 373, 86 N.E.2d 444, 446, the Court noted the certainty that the new law would take effect, presumed that the Department would take steps to enforce its provisions and recognized that rights claimed by defendant would be affected. For the same reasons rights were declared with respect to a statute to become effective in futuro in Hoagland v. Bibb (1957) 12 Ill.App.2d 298, 139 N.E.2d 417. All of the factors deemed controlling in the cases above cited are here present and we are satisfied that the Maine declaratory judgment statute should be liberally construed to permit our consideration of the Sec. 852 amendment before its effective date.

We turn first to a consideration of Sec. 852 in its present from. A number of courts dealing with statutes not unlike our own have concluded that they should be strictly construed as prohibiting only voluntary disclosures. The problem ordinarily arises when the information protected by the statute constitutes important and maerial evidence in a case being tried in court. In such instances it has been necessary to balance the public interest in protecting the confidentiality of the information as against the public interest in providing a fair and just trial. In Maryland Casualty Co. v. Clintwood Bank (1930) 155 Va. 181, 154 S.E. 492, the Court held that a statute preventing the giving of any information concerning a bank should be construed to prohibit only voluntary disclosure and not to 'impede the administration of justice in the courts.' In Marceau v. Orange Realty (1952) 97 N.H. 497, 92 A.2d 656, 657, the Court was dealing with the secrecy provision of the Unemployment Compensation Act. Citing Maryland Casualty Co. with approval, the New Hamshire Court held the fundamental reason for creating a testimonial privilege is to encourage disclosure to public officials of needed information and statutory privileges of this nature must be strictly construed. The Court was of the view that it should plainly appear in the statute itself that the Legislature deemed that the benefits of secrecy in a particular case outweighed the need for correct disposal of litigation, 'The obligation (to disclose information required in the administration of justice) should not be limited without a clear legislative mandate.' The Court therefore concluded that the statute under consideration prevented only voluntary disclosure. Reaching a like conclusion in State ex rel. State v. Church (1949) 35 Wash.2d 170, 211 P.2d 701, the Court emphasized the 'duty to protect the rights of persons accused of crime * * * and * * * to afford them a fair trial.'

***6** Wigmore on Evidence, 3rd Ed., Vol. VIII, Sec. 2285 offers four tests which have proved useful and been applied in construing the secrecy provisions of statutes:

'1. The communications must originate in a confidence that they will not be disclosed.

2. This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties.

3. The relation must be one which in the opinion of the community ought to be sedulously fostered.

4. The injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.'

It is the fourth principle which has been viewed as most relevant to the construction of secrecy statutes. A perusal of the cases suggests that this balancing of 'injury' and 'benefit' has been a most important factor in the minds of courts construing such statutes.

In State ex rel. Haugland v. Smythe (1946) 25 Wash.2d 161, 169 P.2d 706 the secrecy provision of a Social Security statute prevented the divulging of information to anyone. Some of the confidential information was required for use by a juvenile court. The Washington Court deemed applicable the tests set forth in Wigmore (supra) and concluded that, although the privilege would prevent disclosure to those who are motivated simply by curiosity or where the information was sought for purely commercial, personal, or political purposes, or as a basis for creditors' suits or similar proceedings, the statute should not be construed as preventing acquisition of the information by a court for its own use in determining a pending case.

A like result was reached in Jones v. Giannola (1952, Mo.App.) 252 S.W.2d 660; Bell v. Bankers Life & Casualty Co. (1945) 327 Ill.App. 321, 64 N.E.2d 204; and In Re Culhane's Est. (1934) 269 Mich. 68, 256 N.W. 807.

[4] In the instant case the statute contains no express provision barring use of the information in a judicial proceeding or in an investigation conducted by a Legislative Committee having the power 'to subpoena and require the attendance of witnesses and production of books, papers, records and other evidence pertinent to such investigation.' We recognize that there is some risk of injury to plaintiffs from disclosure but we are satisfied that that risk is outweighed by the public interest in having the Legislature fully informed as to matters which involve the use of public funds and the credit of the State, and which may suggest the need for further legislation. We conclude that Sec. 852 must be construed as prohibiting voluntary disclosure by the Authority but not as prohibiting mandatory disclosure either when required by a court of competent jurisdiction or when required by the intervenor Special Interim Legislative Committee. As to the amendment to become effective May 9, 1970, it suffices to say that it is so worded as to be interpretive and is entirely consistent with the construction we have given to Sec. 852 in its present form.

[5] There is abundant authority in support of the proposition that the Legislature has and must have 'the power to exact information in aid of the legislative function.' McGrain v. Daugherty (1927) 273 U.S. 135, 47 S.Ct. 319, 329, 71 L.Ed. 580. In that case the Supreme Court said:

'A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information-which not infrequently is true-recourse must be had to others who do possess it. Experience has taught that mere requests for such information often *7 are unavailing, and also that inforation which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry, with enforcing process, was regarded and employed as a necessary and appropriate attribute of the power to legislate-indeed, was treated as inhering in it. Thus there is ample warrant for thinking, as we do, that the constitutional provisions which commit the legislative function to the two houses are intended to include this attribute to the end that the function may be effectively exercised.'

See also the exposition of the proper scope of legislative investigation in an opinion by Chief Justice Warren in Watkins v. United States (1957) 354 U.S. 178, 187, 200, 77 S.Ct. 1173, 1179, 1185, 1 L.Ed.2d 1273.

In the instant case it is to be presumed that the Legislature is concerned only with matters within the proper scope of investigation. An appreciation of the importance of the operations of the Authority to the financial position of the State can be gleaned from Opinion of the Justices, January 12, 1970, reported in (Me.) 261 A.2d 250, 253, 254. Therein the several Justices gave it as their opinion that:

'Even though bonds authorized by the Legislature under Section(s) 14-A * * * stand in a peculiar category in that

they are to be issued only upon certain contingencies which may never occur, they are by virtue of the constitutional provisions (implemented in the case of 14-A by legislative action in 10 M.R.S.A. Sec. 802 * * *) 'authorized but unissued.' * * * The credit of the State of Maine is directly involved. * * * No bonds have been issued pursuant to Section(s) 14-A * * *. Whether or to what extent any such bonds will ever have to be issued cannot now be known. The requirement of issuance is contingent upon the occurrence of several events, the economic failure of the borrower, the inadequacy of insurance funds in the hands of the Authority, and the inadequacy of funds in the State Contingent Account available to supplement the insurance funds.'

The insuring of industrial loans is a relatively new undertaking for the people of Maine and is clearly a proper subject for legislative review and re-examination.

[6][7][8] Plaintiffs call to our attention the fact that form MIBA #2, a 'Statement of proposed Tenant' such as was submitted to the Authority by plaintiffs, contains the following language:

'It is understood that the Maine Industrial Building Authority will make available the information contained herein only to the proposed mortgagees and local development corporation, and further that the use of this information will be restricted to the determination of the eligibility of the undersigned as the Tenant of the proposed industrial project. It is further understood that the Authority will not disclose the information contained herein to any other person, firm, association or corporation or to any other governmental agency without the express written permission of the undersigned or their successors or assigns.'

Plaintiffs view this as a contractual obligation which they assert may not be impaired by statute. We think this argument must fail for several reasons. Sec. 852 was in existence before this form was filed and accepted and a contract must be construed in the light of the law as it existed when the contract was made. The quoted language lends itself to the construction that only voluntary disclosures are barred as well as does the language of Sec. 852 which we have so construed. We do not view the reference to 'any other governmental agency' as including the Legislature or a committee acting for it. In any event it would be beyond the power and authority ***8.** of the Authority to foreclose proper legislative action by any agreement it might seek to make. In the leading case of Home Bldg. & Loan Assoc. v. Blaisdell (1934) 290 U.S. 398, 54 S.Ct. 231, 239, 242, 78 L.Ed. 413, language was used which casts some light upon our problem. The Court said:

'Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worth while,-a government which retains adequate authority to secure the peace and good order of society. * * * The economic interests of the state may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts. * * * With a growing recognition of public needs and the relation of individual right to public security, the court has sought to prevent the perversion of the clause through its use as an instrument to throttle the capacity of the states to protect their fundamental interests.' (Emphasis ours.)

This principle was reasserted and applied in City of El Paso v. Simmons (1965) 379 U.S. 497, 85 S.Ct. 577, 584, 13 L.Ed.2d 446. We conclude that plaintiffs have no contractual right which has been impaired by statute.

In conclusion, we hold that (1) Intervenor may require from defendant Authority disclosure of records and information obtained from plaintiffs pertinent to the authorized scope of its inquiry and only for its lawful purposes, and (2) plaintiffs are not entitled to the injunctive relief sought by their complaint.

So ordered.