

## Maine Supreme Court Rules on Definition of Public Official

Amanda A. Meader | June 30, 2008

The Maine Supreme Court has just issued a decision that seems to narrow the definition of "agency or public official" under Maine's information disclosure laws. In James P. Moore v. Charles Abbott et al, 2008 ME 100, the Court decided that the three members of an advisory group created by the Attorney General were acting as private citizens and not public officials in handling an investigation request, and so they were not subject to the document disclosure requirements of Maine's Freedom of Access Act ("FOAA").

This case has its origins in the 1989 murder conviction of Dennis Dechaine. Dechaine, who is serving a life sentence, has a vocal group of supporters who insist that he is innocent and that investigators and prosecutors engaged in wrongdoing during the investigation and prosecution of the murder. In response to these continuing accusations, the Attorney General asked three experienced attorneys to independently review the state's handling of the Dechaine matter and to determine whether misconduct occurred.

After the advisory group made a determination of no wrongdoing, James Moore, a Dechaine supporter, asked the advisory group members to allow him to review the files, records and reports compiled during their review. When the members did not respond to Moore's request, he filed an FOAA action in the Superior Court, asking the court to require the advisory group to grant his request. The advisory group prevailed in the Superior Court, and on appeal the Maine Supreme Court affirmed the Superior Court's decision. The Court decided that the advisory group members should not be considered public officials because the members were providing non-binding advice, they received no state funds for their investigation, and they received only "incidental logistical support" from the Attorney General's office.

The Court's decision is surprising for two reasons. First, the Court has a history of interpreting the Freedom of Access Act in favor of disclosure. Second, the decision is contrary to a 1988 case, Lewiston Daily Sun, Inc. v. City of Auburn, 544 A.2d 335 (Me. 1988), involving very similar facts to the one at hand, in which the Court held that an independent, volunteer investigatory committee was required to comply with FOAA. In the Dechaine matter, two members of the Court did not agree with the majority opinion, arguing that the advisory panel was acting as an arm of the AG's office and that the public nature of the investigation did not change simply because it was conducted by a group of private citizens.

What does all this mean for municipalities? It seems to us that this may be one of those court decisions which is best explained by the unique circumstances surrounding the case and should not necessarily be looked to for much guidance in the future. The Lewiston Daily Sun case has not been overruled. So our suggestion is that municipalities proceed

under the assumption that the records and workings of advisory committees are very likely to be considered public under the Freedom of Access Act.

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