

§211. Examination; notice requirements

The Attorney General, whenever he believes any person to be or to have been in violation of this chapter, may examine or cause to be examined for that purpose, any books, records, papers and memoranda of whatever nature relevant to such alleged violation. The Attorney General may require the attendance of such person or of any other person having knowledge in the premises at any place in the county where such person resides or has a place of business or in Kennebec County if such person is a nonresident or has no place of business within the State, and may take testimony and require proof material for his information, and may administer oaths or take acknowledgement in respect of any book, record, paper or memorandum. The Attorney General shall serve notice of the time, place and cause of such examination or attendance at least 10 days prior to the date of such examination. [PL 1969, c. 577, §1 (NEW).]

1. Service. Service of any such notice may be made by:

A. Delivering a duly executed copy thereof to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; [PL 1969, c. 577, §1 (NEW).]

B. Delivering a duly executed copy thereof to the principal place of business in this State of the person to be served; or [PL 1969, c. 577, §1 (NEW).]

C. Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this State or, if said person has no place of business in this State, to his principal office or place of business. [PL 1969, c. 577, §1 (NEW).]

[PL 1969, c. 577, §1 (NEW).]

2. Contents. Each such notice shall:

A. State the time and place for taking the examination and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; [PL 1969, c. 577, §1 (NEW).]

B. State the statute and section thereof, the alleged violation of which is under investigation, and the general subject matter of the investigation; [PL 1969, c. 577, §1 (NEW).]

C. Describe the class or classes of documentary material to be produced thereunder with reasonable specificity so as fairly to indicate the material demand; [PL 1969, c. 577, §1 (NEW).]

D. Prescribe a return date within which the documentary material is to be produced; and [PL 1969, c. 577, §1 (NEW).]

E. Identify the members of the Attorney General's staff to whom such documentary material is to be made available for inspection and copying. [PL 1969, c. 577, §1 (NEW).]

[PL 1969, c. 577, §1 (NEW).]

3. Exceptions. No such notice shall:

A. Contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this State; or [PL 1969, c. 577, §1 (NEW).]

B. Require the disclosure of any documentary material that would be privileged or that for any other reason would not be required by a subpoena duces tecum issued by a court of this State. [PL 2001, c. 370, §1 (AMD).]

[PL 2001, c. 370, §1 (AMD).]

4. Disclosure of documentary material. Documentary material demanded pursuant to this section must be produced for inspection, reproduction and copying during normal business hours at the principal office or place of business of the person served, in the county where that person resides or has

a place of business, in Kennebec County if the person served is a nonresident or has no place of business within the State or at such other times and places as may be agreed upon by the person served and the Attorney General. Any book, record, paper, memorandum or other information produced by any person pursuant to this section, unless otherwise ordered by a court of this State for good cause shown, may not be disclosed to any person other than the authorized agent or representative of the Attorney General unless with the consent of the person producing the same, except that such material or information may be disclosed by the Attorney General in court pleadings or other papers filed in court.

[PL 2001, c. 370, §2 (NEW).]

5. Motion for additional time, to modify or set aside or grant protective order. At any time prior to the date specified in the notice or within 21 days after the notice has been served, whichever period is shorter, the court upon motion for good cause shown may extend that reporting date or modify or set aside that demand or grant a protective order in accordance with the standards set forth in the Maine Rules of Civil Procedure, Rule 26(c). The motion may be filed in the Superior Court of the county in which the person served resides or has a usual place of business or in Kennebec County.

[PL 2001, c. 370, §2 (NEW).]

6. Information not to be used in criminal proceeding. A person is not excused from attending and testifying or from producing documentary material in compliance with this section on the ground or for the reason that the testimony or other information, documentary or otherwise, may tend to incriminate that person or subject that person to a penalty or forfeiture. Testimony and other information obtained under the authority of this section and information directly or indirectly derived from such testimony or other information may not be used against a natural person who has testified or produced information under oath in compliance with this section in any criminal case except a prosecution for perjury, giving a false statement or otherwise failing to comply with a notice served upon that person under this section.

[PL 2001, c. 370, §2 (NEW).]

7. Cost of court reporter. At the request of the person under investigation or that person's attorney, any testimony taken pursuant to a demand or notice under this section must be recorded on a recording device or taken before a court reporter authorized to serve as such under the laws of the State. Upon request of either party, all such testimony taken or recorded must be transcribed by an authorized court reporter, and in that case the original transcript of that testimony must be preserved by the Attorney General. The cost of the taking or recording and transcription must be paid by the State. In the event the Attorney General or some other party obtains judgment against the party whose testimony is taken for a violation of section 207, the cost of the court reporter or recording and transcription may be recovered by the State in such a judgment.

[PL 2001, c. 370, §2 (NEW).]

8. Authority not applicable in criminal proceedings. This section is not applicable to any criminal proceeding brought under the laws of this State.

[PL 2001, c. 370, §2 (NEW).]

SECTION HISTORY

PL 1969, c. 577, §1 (NEW). PL 1973, c. 334 (AMD). PL 1973, c. 648 (AMD). PL 1975, c. 529 (AMD). PL 2001, c. 370, §§1-5 (AMD).

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