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STATE OF MAINE

Inter-Departmental Memorandum Date April 22, 1968

To James K. Keefe, Commissioner

Dept. Economic Development

From Phillip M. Kilmister, Assistant

Dept. Attorney General

Subject Transfer of Planning Functions from the Department of Economic Development to the newly created State Planning Office.

FACTS:

In your memorandum of April 12, 1968 submitted to this office you state that the recently enacted "State Planning Act" is to take effect on April 26, 1968 but that the Act does not provide funds to set up the State Planning Office prior to July 1, 1968. It is stated that many of the communities and regions of the State are currently making applications for planning grants through your Department for planning projects available under section 701 of the Federal Housing Authority Act of 1954 as amended, and you have basically asked whether or not the Department of Economic Development should process such applications after the effective date of the State Planning Act, to wit: April 26, 1968. A subsidiary inquiry in your memo seeks clarification as to the power still vested within your Department relative to providing planning assistance for regions and municipalities. Slightly rephrased, your questions may be stated as follows:

QUESTION #1:

When should the planning functions of the Department of Economic Development in regard to regional and urban planning projects be transferred to the State Planning Office?

ANSWER:

As of April 26, 1968 or as soon thereafter as is practicable.

QUESTION #2:

Does the enactment of the State Planning Act (P. L. 1967, c. 533), effective as of April 26, 1968, remove the power of providing assistance for regional and urban planning from the Department of Economic Development?

ANSWER:

Yes.

OPINION:

Question number one has been expressly answered and question number two answered by implication in two recent opinions of this Office rendered under date of March 13, 1968 and March 29, 1968 respectively. We submit copies of both opinions in answer to the questions posed.

At the risk of providing some duplication of language, we would amplify our answers to the above-stated questions by emphasizing the language in paragraphs one and three of section 4 of P. L. 1967, c. 533 which reads as follows:

"Sec. 4. Transfer of personnel and budget. The Assistant Director of the Planning Division of the Department of Economic Development, who is chief administrator of planning programs and holds a position of Planning Associate II, shall be transferred to the State Planning Office. He shall become the Director of Regional and Local Planning. In addition, one position of Planning Associate I, one position of Illustrator III and the position of Clerk Typist II shall be transferred to the State Planning Office.

"The appropriation requests of the Department of Economic Development, or actual appropriations which cover the positions or relate to the supplying and supporting of the positions for planning assistance to Maine regions and municipalities are transferred with the positions. This includes the transfers and contributions appropriation for urban planning and the appropriation made to the Department of Economic Development for Urban Renewal."

The above-quoted statutory language which provides for a transfer of personnel and funds relative to municipal and regional planning is mandatory and not permissive in nature. Such transfer should be carried out as of April 26, 1968, the effective date of the Act, or as soon thereafter as is practicable.

The second question which you ask merits further discussion. The State Planning Act (P. L. 1967, c. 533) expressly repealed subsections 6, 7 and 8 of Section 451 of Title 10 which empowered the Department of Economic Development to provide assistance in regional and municipal planning and clearly posited said power within the State Planning Office. Confusion arises because there is no provision in the State Planning Act which repeals expressly the language of the fourth paragraph of Section 402 of Title 10 of the Revised Statutes, which reads as follows:

"The commissioner is authorized and empowered to accept for the State any federal funds apportioned under federal law relating to urban planning and planned public works and to do such acts as are necessary for the purpose of carrying out such federal law; and to accept from any other agency of government, individual, group or corporation such funds as may be available in carrying out this chapter."

Standing alone, such language appears to clearly vest in the Commissioner the power to accept federal funds for urban planning and to render assistance in regard to such planning. However, we do not believe that the legislature intended to repose in the Commissioner of D.E.D. the power to provide planning assistance for regional and urban projects while simultaneously stripping the Department of express authority for carrying out such assistance as set forth in 10 M.R.S.A. § 451, subsections 6, 7 and 8. Furthermore, the language of section 4 of P. L. 1967, c. 533 which provides for the transfer of planning assistance functions from the "D.E.D." to the State Planning Office militates against a statutory construction that the legislature intended to maintain such planning functions within the Department of Economic Development.

James K. Keefe

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April 22, 1968

The language of P. L. 1967, c. 533, when read in its entirety, repeals by implication the language of 10 M.R.S.A. § 403 quoted above which appears to vest within the Commissioner the power to provide municipal and regional planning assistance.

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