STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

REASONS:

It is indeed unfortunate that in writing laws more care and thought cannot be given to the language used. In 26 M.R.S.A., Chapter 13, the word "commission" is used frequently. It is defined in §1043, subsection 7, as "the Employment Security Commission." The Maine Employment Security Commission consists of 3 members. 26 M.R.S.A.§1081. It would seem from these 2 sections that the word "commission" refers to the 3 persons who are appointed by the Governor. However, a reading of Chapter 13 shows that such is not the case. The word may also refer to the whole agency. For examples, see second sentence § 1044, subsection 2, "any proceeding before the commission"; in most instances when used in §1193;§1221 in several places as subsection 3, A, 6, and 7; and § 1222. There may be other examples.

The Chairman of the Commission is asking the meaning of the word "commission" in the first sentence of 26 M.R.S.A. § 1082, subsection 1. The sentence reads,

"It shall be the duty of the commission to administer this chapter."

In this sentence the word "commission" refers to the 3 members appointed by the Governor in accordance with §1081 subsection 1. The "commission" acts by a majority vote. This is stated in 1 M.R.S.A. § 71, subsection 3:

"Words giving authority to 3 or more persons authorize a majority to act, when the enactment does not otherwise determine."

26 M.R.S.A. Chapter 13, does not "otherwise determine." In fact, the language of §1081, subsection 3, confirms the general rule.

The Commission is authorized to delegate some of its powers and duties to subordinates.§1082, subsection 4, note particularly the second sentence:

"The commission may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this chapter, and . . . ."

The answer to the third question is the same as the answer to number 1. The commission acts by a majority of its members. Allowing 3 commissioners to each go his own way could soon result in utter chaos.

GEORGE C. WEST
Deputy Attorney General

May 29, 1970
Environmental Improvement Comm.

George C. Gormley, Supervising Engineer

State grants to federally funded construction

SYLLABUS:

1. Title 38 M.R.S.A. § 411 (1) requires some federal funding in order than municipal pollution abatement facilities may qualify for State grants.

2. Title 38 M.R.S.A.§411 (2) is read without reference to§411 (1) requirements regarding federal funding, but contains its own prerequisite that State advancement must be in anticipation of federal reimbursement.

FACTS:

Title 38 M.R.S.A.§411 (1) (1964) authorizes State contribution to municipal

pollution abatement construction programs which have received "federal approval and federal funds for construction". Such State funding is up to a maximum of 35%.

Section 411 (2) further authorizes State advances to municipal programs when construction programs have received federal approval, but only in anticipation of reimbursement from federal programs of said amounts.

QUESTION:

1. How much federal funding must a construction project receive under section 411 (1) in order to qualify for State assistance?

2. Does the requirement of federal approval and funding apply also to the advancement provision of section 411 (2)?

ANSWER:

1. Any amount.
2. No.

REASONING:

1. The language in 411 (1) is permissive. That is, there is no absolute requirement on the State of Maine that it fund any municipal pollution treatment facility. The specific language says that "the Commission is authorized to pay an amount not in excess of 30% of the expense" of a pollution abatement facility. Clearly, the Commission need not necessarily make a grant under § 411 (1) even if the facility acquires federal approval and funds. If the Environmental Improvement Commission determines that circumstances warrant such a grant, it may award aid in an amount up to 30% of the cost. This leaves the Environmental Improvement Commission with a great deal of flexibility in making grants to qualified facilities.

The same kind of flexibility is available to the Secretary of the Interior under the Federal Water Pollution Control Act, 33 U.S.C.A.§466e as amended. The Secretary is authorized to make construction grants to municipal facilities in amounts up to 50%. However, even if a facility meets federal criteria, the Secretary of the Interior may make grants in lesser amounts.

The intent of § 411 (1) appears to be to provide the same kind of flexibility to the Environmental Improvement Commission that the Secretary of the Interior enjoys. Merely because a facility qualifies for federal aid does not mean that the Environmental Improvement Commission is compelled to give funds. It may exercise its judgment as to the amount granted. The answer to your question then is that any federal funding is sufficient to qualify for State assistance. Under no circumstances is the Environmental Improvement Commission required to make a grant under § 411 (1).

2. Section 411 (2) is a separate section by virtue of the initial phrase "Notwithstanding and in addition to subsections 1 and 3". Subsection 411 (2) goes on further to state the conditions under which advancements are made. The conditions are federal approval and federal "reimbursement". The requirements of § 411 (1) regarding "federal funding" do not apply.

This interpretation is confirmed by a reading of the Federal Water Quality Act, 33 U.S.C.A. § 466, as amended, which provides that some projects not receiving federal funding or only partial funding may qualify for reimbursement.

It is also apparent in § 411 (2) that there need be no guarantee of federal

reimbursement prior to such advancement. Language in subsection (2) confirms this when it says that such aid is to be made "in anticipation of reimbursement". More conditional language is found in sub (2) requiring federal funds to go to the State Treasurer "in the event that any federal program reimburses the State". The conclusion is that subsections 411 (1) and 411 (2) must be read without reference to each other.

JOHN M. R. PATERSON
Assistant Attorney General

May 29, 1970
State

Joseph T. Edgar, Secretary of State

SYLLABUS:

A sticker may contain more than the name of one candidate provided the names are so spaced as to appear opposite the squares in which the check mark or cross must be placed.

FACTS:

In the city of Portland each party is entitled to nominate 11 candidates for Representative to the Legislature. The Republican Party has only five candidates who filed nomination papers and will appear on the printed ballot. A campaign is being inaugurated to have six additional candidates on the ballot as write-in candidates. The group sponsoring this movement wishes to make one sticker which will contain the names and residences of six candidates.

QUESTION:

Is it legal for a group of write-in candidates in the coming Primary Election to have printed stickers to be pasted on the ballots listing the names and residences of the entire group of candidates all on the one sticker, or must each candidate provide a separate sticker for his own particular candidacy?

ANSWER:

Yes, it is legal to use one sticker with several names.

REASON:

21 M.R.S.A.§701 states what must appear on a Primary Election ballot. Subsection 2 D of that section reads as follows:

> "Space for write-ins. At the end of the list of candidates for nomination to each officer, there must be left as many blank spaces as there are vacancies to be filled, in which a voter may write or paste the name, without any title, of any person for whom he desires to vote, in which event he shall write in or paste in the residence of the person whose name is written in, before his vote shall be counted."

The only thing that is required is that the person's name and residence appear on the