

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

Cond. 3/10
October 4, 1972

James S. Haskell

L.U.R.C.

E. Stephen Murray, Assistant

Attorney General

Constitutionality of 12 M.R.S.A. § C. 206-A

You have asked for our opinion as to the constitutionality of the Maine Land Use Regulation Commission Law, 12 M.R.S.A. § C.206-A.

The concept of this law, i.e., regulating the use of land by the exercise of the State's police powers (commonly called "zoning") was held to be constitutional by the Supreme Judicial Court of Maine in York Harbor Village Corp. v. Libby, 126 Me. 527, 140 A. 382 (1928). The United States Supreme Court held "zoning to be constitutional in Village of Euclid v. Ambler Realty Co., 272, U.S. 365 (1926).

Chapter 206-A, like "All acts of the Legislature are presumed to be constitutional and this is a presumption of great strength and the burden is upon him who claims the act is unconstitutional to show its unconstitutionality". State v. Karmil Mfg. Corp., 158 Me. 450, 186 A. 2d 352 (1962).

While it is our opinion that Chapter 206-A is constitutional we point out that in the unlikely event the court would hold that a portion of the law is unconstitutional, it is wholly unlikely that the court would void the whole law for the reason that the court will, where at all possible, separate that portion of a law which is unconstitutional from that portion which is constitutional, and void only the unconstitutional portion. In addition, 1 M.R.S.A. § 71, sub-§ 8 provides that the provisions of Maine statutes are severable.

Finally, you should note there is a distinction to be made between laws which are unconstitutional on their face and laws which are unconstitutional as applied and interpreted and enforced in particular cases. Both Maine Statutes (1 M.R.S.A. § 71) and Maine case law [State v. Johnson, Me., 265 A.2d 711 (1970)] make it clear that a law, as interpreted or administered in a particular circumstance may be held to be invalid as applied, but still valid in concept and thus sustained as constitutional. Thus, there may be some few fact situations which could conceivably arise under the administration of Chapter 206-A, giving rise to action on the part of the Commission which would be unconstitutional; but this would not have any effect on the constitutionality of chapter 206-A itself.

In short, it is our opinion that 12 M.R.S.A. Chapter 206-A is constitutional.

ESM/mf