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Distributed by Rep. Cooney.

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March 6, 1973

Honorable Leighton Cooney
House of Representatives
State House
Augusta, Maine

Re: L.D. No. 1001: "AN ACT Relating to Recording Municipal Ordinances Relating to Land Control.

Dear Representative Cooney:

This letter responds to your correspondence dated March 5, 1973, posing four questions which are answered below.

1. Assuming enactment of L.D. 1001 in its present form, you ask whether a municipal ordinance relating to land control would be valid if it were not filed in accordance with the provisions of L.D. 1001, but was otherwise valid in promulgation. We respond in the affirmative. The statutory procedure by which municipalities enact ordinances is set forth in 30 M.R.S.A. § 2153. The purpose of legislative document 1001 is to require that a municipality which adopts any ordinance relating to land control file a certified copy of such ordinance in the Registry of Deeds in the County or Registry District in which the municipality is located. Amendments to such ordinances are likewise required to be filed "as they become effective." There is no language in L.D. 1001 postponing the legal effect of an ordinance relating to land control until filing of the ordinance in the Registry of Deeds. According to the provisions of 30 M.R.S.A. § 2155, submission to any court or administrative tribunal of a municipal ordinance certified over the signature of the municipal clerk entitles the ordinance to prima facie proof of validity. No language appears in legislative document 1001 abridging the significance of the language of § 2155.

2. Next, you ask whether, in the event the Legislature intends there be compliance with the provisions of legislative document 1001, it is necessary to add provisions to that effect in the bill. It seems advisable to amend the bill so that compliance with its terms is realized, if such be the intention of

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the Legislature. As presently written, the bill does not assure compliance with its terms. No penalty is specified nor is the effective date of an ordinance made conditional upon compliance with filing requirements in the Registry of Deeds.

3. In your third question, you ask whether any penalty is provided in the statutes should there be noncompliance with the filing requirement in the bill. We answer that question in the negative. In so responding, we do not mean to imply that an appropriate legal action might not be successful if brought in order to seek compliance with the provisions of the bill. Because L.D. No. 1001 calls for municipal officers to perform a ministerial duty, an action sounding in mandamus to require performance of that ministerial duty could well be maintained.

4. Your fourth question is in the following form: "In a situation where the provision is not complied with, is it possible for someone having standing to successfully contend that such non-compliance constitutes a defense regarding advancement of the legality of the ordinance?" We answer that question with a qualified yes. It is not inconceivable, given the particular language in L.D. No. 1001, for a court to decide that the prima facie proof of validity of an ordinance relating to land control (proven as a result of compliance with 30 M.R.S.A. § 2155) had been overcome by a showing of noncompliance with the filing requirements of the proposed Bill. While it is my opinion that a court would sooner decide that a municipal ordinance relating to land control, promulgated by the municipality pursuant to the provisions of Title 30, but which ordinance lacked compliance with the filing provisions under the reference Bill, was valid (in the absence of other proof to the contrary), it is conceivable that a defense to such an ordinance might be successful. Any answer to such a question involves conjecture as to what a court would do in light of the stated hypothetical. When reading the provisions of 30 M.R.S.A. § 2155 together with the language of the proposed Bill, nothing mandates a particular result. Section 2155 gives prima facie proof of validity to an ordinance certified over the signature of the municipal clerk. Any evidence of noncompliance with the provisions of the proposed Bill would be some evidence offered to overcome the prima facie standing afforded the ordinance. If a court determined the evidence so offered overcame the prima facie proof of validity, then the ordinance would be in danger of impeachment.

Trusting that this letter sufficiently answers the four questions posed in your correspondence, I remain,

Very truly yours,

John W. Benoit Jr.
JOHN W. BENOIT, JR.
Deputy Attorney General

JWBJr./ec
cc: Hon. Cecil H. McNally
Hon. Cyril M. Joly, Jr.
Hon. David F. Emery