

# MAINE STATE LEGISLATURE

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OS J.A. G.W. yes ✓  
May 7, 1973

James S. Haskell, Jr., Executive Dir.

Land Use Regulation Commission

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Planning and Zoning by Plantations

SYNOPSIS:

Plantations do not have the power (i) to establish a planning board, zoning board of appeals or a building code and building inspector or (ii) to adopt and enforce a comprehensive plan and zoning ordinance. To a limited extent and depending upon the circumstances, the Land Use Regulation Commission can enter into cooperative arrangements with plantations for the purpose of jointly working on planning, zoning and development review within plantations.

FACTS:

The Land Use Regulation Commission ("LURC") has jurisdiction, for planning and zoning purposes, over plantations and, in fact, has already zoned one plantation. Questions have now arisen with respect to whether or not plantations themselves have the power to establish a planning board, zoning board of appeals, building code and building inspector and to prepare, adopt and enforce a comprehensive plan and zoning ordinance. In this connection, Lakeville Plantation has apparently purported to adopt a comprehensive plan and zoning ordinance and has submitted those documents to LURC for its approval. You have inquired whether or not plantations have such powers and, if not, whether LURC can enter into contracts or other agreements with plantations for the purpose of jointly working on planning, zoning and development review.

QUESTION NO. 1:

Does a plantation have the power to establish a planning board, zoning board of appeals and/or building code and building inspector, or to prepare, adopt and enforce a comprehensive plan and zoning ordinance?

ANSWER:

No.

REASONING:

Title 1 M.R.S.A. § 72, sub-§ 13 states that the term "municipality" as used in the statutes includes cities, towns and plantations except in Title 30, Chapters 201 to 213, 235, 239, subchapters IV and V, Chapter 241, subchapters 1 and 2, and Chapter 243. Prior to the adoption of the Home Rule Amendment (Me. Const., Art. VIII-A), all powers granted to municipalities were required to be granted by the express provisions of a legislative act, and most of these powers are set forth in Title 30.

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The power to establish a planning board and a zoning board of appeals and to prepare a comprehensive plan and zoning ordinance was contained in Title 30 M.R.S.A., Chapter 239, subchapter V and was therefore inapplicable to plantations. The power to establish a building code and a building inspector is presently found at Title 30 M.R.S.A., Chapter 209, § 2151, sub-§ 4. This law is also inapplicable to plantations by virtue of Title 1 M.R.S.A. § 72, sub-§ 13. Since the Home Rule Amendment, much of Title 30 M.R.S.A., Chapter 239, subchapter V has been repealed and parts of it have been replaced by the provisions of Title 30 M.R.S.A. Chapter 239, subchapter VI. This latter subchapter, while not expressly excluded from powers granted to plantations in Title 1 M.R.S.A. § 72, sub-§ 13, nevertheless refers to zoning ordinances adopted "pursuant to the home rule power" granted under the Maine Constitution. Moreover, it is not a grant of power but is a regulation of how the zoning power granted under the Home Rule Amendment may be exercised.

Since there is no express grant of such powers to plantations, therefore, the remaining issue is whether or not plantations have such power under the Home Rule Amendment. The answer is that plantations do not have such power. The Home Rule Amendment grants to the "inhabitants of any municipality" the power to "alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character." The use of the expression "charter" makes it apparent that the Home Rule Amendment applies to incorporated municipalities, for "charter" means an "act of the legislature creating a corporation or creating and defining the franchise of a corporation." Black's Law Dictionary. Plantations are not created by such acts of the Legislature but, instead, are organized by individuals, pursuant to a statutory procedure, to provide for a limited measure of local government. They have been referred to as "quasi-corporations." Blakesburg v. Jefferson (1830) 7 Me. 125. In any event, the Home Rule Amendment recites that the "Legislature shall prescribe the procedure by which the municipality may act" and the only place where the Legislature has so prescribed is at Title 30, Chapter 201-A, which does not apply to plantations by virtue of Title 1 M.R.S.A. § 72, sub-§ 13.

QUESTION NO. 2:

Can Lakeville Plantation apply and enforce a zoning ordinance and building code which that plantation recently purported to adopt?

ANSWER:

No.

REASONING:

If Lakeville Plantation is a plantation and is not an incorporated town, then it has no existing general statutory authority to apply or enforce a zoning ordinance or building code, for the reasons discussed hereinabove in Question No. 1.

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QUESTION NO. 3:

Can LURC enter into a contract or other arrangement with a plantation for the purpose of jointly working on planning, zoning and development review within that plantation?

ANSWER:

Yes, but only for limited purposes. See answer.

REASONING:

Your question is expressed rather broadly and it is difficult to determine exactly what powers and responsibilities would be granted by such a contract. As you noted, however, Title 12 M.R.S.A. § 685-C.5 authorizes LURC to execute contracts and other agreements to carry out its purposes. Its purposes include, of course, the extension of the principles of sound planning, zoning and subdivision control to the unorganized and deorganized townships and mainland and island plantations of the State. Cooperative agreements of the general type suggested, depending upon precisely what functions are delegated and responsibilities assumed, seem conceptually permissible for LURC. Plantations, on the other hand, have only such powers as are expressly granted to them. While they do have the power to regulate a number of matters of local concern (including, for example, junkyards, dumps, sewers and drains, parks and playgrounds, etc.), they have no inherent power to enter contracts and they have no broad express grant of such a power. To the extent an agreement directly relates to an expressly authorized function of a plantation, it may be authorized. Moreover, to the extent the contract is essentially a voluntary cooperative arrangement rather than an enforceable obligation, the question of the power of the plantation to enter into it may be obviated. In this connection, we note that the individuals residing in or governing a plantation have the right to prepare a comprehensive plan which they propose for their plantation, even though that plan cannot be legally implemented and enforced by the plantation itself. It seems appropriate for those individuals, if they wish, to urge their plan upon LURC, through evidence at public hearings and similar appropriate means, as LURC zones and prepares a comprehensive plan for the areas over which LURC has jurisdiction.

Again, much depends upon the precise nature and provisions of the contract or other arrangement which LURC proposes to enter and we reserve comment until we have more specific details before us.

Please let us know if we can be of further assistance.

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