

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date August 30, 1973

To Charles M. Sexton

Dept. Land Use Regulation Commission

jm Lee M. Schepps, Assistant

Dept. Attorney General

Subject Malfunctions of Septic Systems

This is in response to your memo of August 16, 1973.

The provisions of Title 30 M.R.S.A. § 4539 vest power in municipal officers and LURC therefore has no power under that statute. Likewise, LURC has no direct and express power under its own statute to abate specific malfunctioning septic systems.

I would point out, however, that assessors of plantations do have the powers specified in Title 30 M.R.S.A. § 4359 and are "municipalities" within the meaning of that statute. To that extent, therefore, remedies exist in a portion of the lands subject to LURC's jurisdiction. In addition, Title 30 M.R.S.A. § 4359 declares a malfunctioning septic system to be a "nuisance." Accordingly, such systems are subject to the provisions of Title 17 M.R.S.A., Chapter 91 dealing with nuisances, including Title 17 M.R.S.A. § 2706 imposing a \$100 fine and Title 17 M.R.S.A. § 2702 providing for the abatement of nuisances. Criminal nuisance actions are misdemeanors and would, therefore, normally be handled by the several County Attorneys. If LURC is willing to undertake the responsibility of investigating such systems, developing evidence to be used in a prosecution and testifying in such cases, I see no reason why County Attorneys should not respond to requests by LURC to pursue such matters. Obviously, in the event the staff determines to embark upon such a program in more than a casual and informal manner, the Commission should be consulted.

Let me know if I can be of further assistance.

LEE M. SCHEPPS
Assistant Attorney General

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NOT A FORMAL OPINION