

MAINE STATE LEGISLATURE

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January 2, 1974

Fortin Powell

State Planning

John M.R. Patterson

Attorney General

Municipal Subdivision Statute, 30 M.R.S.A. § 4956

Your memorandum of October 31, 1973 commenting on the above statute and the informal memorandum issued by this office in 1972 was forwarded to me. I apologize for not having responded earlier to your comments, but, as I am sure you can appreciate, we have had a number of urgent matters to which we have been required to respond. In any event, I appreciate your comments and suggestions.

In general, I agree with your remarks regarding the interpretation of the definition of the term "subdivision" as found in §4956. I don't believe it was the intent of our Advisory Memorandum to exclude high-rise condominiums from the definition of subdivision. I am sure you can appreciate, however, that the interpretation given to that statute by this office is a rather broad interpretation and there is, of course, no guarantee that we are right. Indeed, there is a substantial segment of the Bar in Maine that disagrees with the views of this office. We have considered your suggestion of updating and revising our 1972 Advisory Memorandum and I would anticipate that at some time in the future we will do just that. In the meantime, we have tried to establish a procedure for answering the numerous inquiries which are directed to this office regarding interpretation of that statute. We have nearly finalized an agreement with the Maine Municipal Association along the following lines. Any inquiry from a land owner or an attorney requesting an interpretation of the subdivision statute would first be referred to the local planning board. The purpose of this step is to insure that the local planning board is aware that a question exists regarding some development in their community and to insure that the answer which we render is based on all the facts, including those that the developer chooses to advise us of and those of which the planning board is aware but which would otherwise not come to our attention. In the event that the planning board is unable to answer the question from the developer or attorney, the planning board may refer that question to the Maine Municipal Association. This second step is taken out of recognition of the fact that the Maine Municipal Association provides legal assistance to all 495 communities in the State and that the Attorney General is not the attorney for each municipality in the State. In addition, the Attorney General's office and Maine Municipal Association have worked closely in the past in formulating interpretation to the subdivision statute and we think it is only sensible that they continue to play a significant role in the future. In the event that a question arises which the Maine Municipal Association deems significant enough to refer to our office, the MMA would direct the question to us for an answer. We would, in turn, answer the question for the Maine Municipal Association. Once the details of this agreement have been finalized it is our intention to advise all the municipalities of this agreement and the State and County Bar Associations. In addition, we would hope that the Maine Municipal

Association would keep all municipalities in the State aware of the interpretation issued in regard to the subdivision statute.

While this may seem like a rather cumbersome structure, it has the advantage of replacing what has, to date, been no system at all and has resulted in substantial state-wide confusion regarding interpretation of the subdivision statute and how a citizen goes about obtaining an answer to his question. Using the system outlined above, all parties conceivably interested in a particular question will be advised of the State's position.

I hope this answers your memorandum of the 31st. We would certainly appreciate receiving any other suggestions which you might have regarding this problem.

Thanks again for your interest.