

MAINE STATE LEGISLATURE

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May 8, 1974

Fourtin Powell, Regional Planner

State Planning Office

Cabanne Howard, Assistant

Attorney General

You asked: what effect incorporation would have on a regional planning commission's ability to undertake law enforcement activities or to assess its member municipalities for financial support. It is clear that the commissions do not have these powers at present, but they are concerned lest they take any action, such as incorporating, which might limit the Legislature's ability to devolve such authority on them in the future.

The answer, however, is that incorporation has no effect on any governmental unit's ability to discharge its governmental functions.

As the Supreme Judicial Court stated in Libby v. City of Portland, 105 Me. 370, 372, (1909), a clear distinction exists between a governmental subdivision's corporate and governmental functions.

"In the absence of any special rights conferred or liabilities imposed by legislative charter, towns and cities act in a dual capacity, the one corporate, the other governmental. To the former belongs the performance of acts done in what may be called their private character, in the management of property or rights held voluntarily for their own immediate profit and advantage as a corporation, although ultimately inuring to the benefit of the public, such as the ownership and management of real estate, the making of contracts and the right to sue and be sued; to the latter belongs the discharge of duties imposed upon them by the Legislature for the public benefit, such as the support of the poor, the maintenance of schools, the construction and maintenance of highways and bridges, and the assessment and collection of taxes The Revised Statutes recognize this two fold character, [30 M.R.S.A. § 1902] making the inhabitants of each town a body corporate, and [1 M.R.S.A. § 7] making towns a subdivision of the State."

See also Merrill v. Inhabitants of Town of Gray, 37 F. Supp. 61 (D. Me. 1941).

Should the Legislature desire to invest the regional planning commissions with such governmental functions as those enumerated by the Libby court or in the request for this opinion, it has the power to do so. The fact that the regional planning commission might already be incorporated need have no more effect on their legal capacity to meet their newfound governmental responsibilities than a town's corporate status would prevent it from discharging the identical functions.

AN INFORMAL OPINION

CH:mfe

CABANNE HOWARD

Assistant Attorney General