

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

Inter-Departmental Memorandum Date October 11, 1974

To State Planning Office

Dept. Executive

From Jon A. Lund, Attorney General

Dept. Attorney General

Subject Shoreland Zoning Guidelines

You have asked whether the Guidelines for Municipal Zoning Ordinances, promulgated by the Board of Environmental Protection and the Land Use Regulation Commission on December 15, 1973, pursuant to Section 4813 of the Shoreland Zoning Act, 5 M.R.S.A. § 4911, et seq., are subject to the provisions of the Administrative Code, 5 M.R.S.A. § 2301, et seq. More specifically, you have asked whether the Guidelines constitute "rules" as that term is defined by the Code in Section 2301(3).

Discussion of this last question is unnecessary at this juncture because it appears from the language of the Shoreland Zoning Act and from the administrative procedure which it established that the Legislature did not intend that the Act, or any administrative actions taken under it, be subject to the Code.

When it enacted the Shoreland Zoning Act, the Legislature created a wholly unique structure for its administration. Rather than commit responsibility for the implementation and enforcement of the statute to a single state agency, the Legislature vested primary responsibility in the municipalities of the state and lodged advisory and supervisory authority in two state agencies, the Board of Environmental Protection and the Land Use Regulation Commission, who, moreover, were to act "pursuant to the administrative direction of the State Planning Office," a division of the Executive Department (emphasis added). The only one of these bodies whose actions are presently subject to the Administrative Code is the Board of Environmental Protection; neither the Land Use Regulation Commission, the State Planning Office, nor the municipalities of the state are covered. In view of the fact the Legislature placed the Board of Environmental Protection and the Land Use Regulation Commission under the "administrative direction" of the State Planning Office, it follows that the Legislature did not intend that the Shoreland Zoning Act be subject to the Administrative Code. Thus, any actions taken jointly by the Board of Environmental Protection and the Land Use Regulation Commission pursuant to the Act, such as the promulgation of the Guidelines or the imposition of the Guidelines on a particular municipality, should not be considered subject to the requirements of the Administrative Code.

JON A. LUND
Attorney General

JAL/ec