

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date December 11, 1974

To Rich Rothe

Dept. State Planning Office

From Cabanne Howard, Assistant

Dept. Attorney General

Subject Review of Shoreland Zoning Ordinances

You have asked three questions regarding the manner of review of ordinances adopted pursuant to the Shoreland Zoning Act, 12 M.R.S.A. §§4811 et seq. Two of these ask the same general question: whether the Board of Environmental Protection and the Land Use Regulation Commission are required to seek an opinion of the Attorney General in determining whether a particular shoreland zoning ordinance submitted to them by a municipality is so "lax and permissive" as to justify the adoption of a "suitable" ordinance for the municipality by the Board and Commission, pursuant to the provisions of Section 4813 of the Act. The final question is whether the Board and Commission have the discretion to refrain from adopting a "suitable" ordinance, even though they have determined a municipality's ordinance is "lax and permissive" on its face, in order to learn whether the municipality's ordinance turns out to be "lax and permissive" in practice.

The answer to the first question is that it is clear from the provisions of the Act that the Board and Commission do not have to seek the opinion of the Attorney General in determining whether a particular municipality's ordinance is "lax and permissive". Section 4813 of the Act entrusts that responsibility solely to the Board and Commission. Specifically, it requires them to determine whether

" . . . particular municipal ordinances because of their laxity and permissiveness do not adequately prevent and control water pollution, protect wildlife habitat, conserve shore cover or otherwise fail to accomplish the purposes outlined in section 4811."

This determination is not a matter of legal interpretation. It requires that the Board and Commission, as the agencies charged with the administration of the Act, make a policy judgment on each ordinance submitted to them and act accordingly. Of course, the Attorney General's office is available and would be pleased to render


whatever legal assistance may be necessary to assist the Board and Commission in reaching this administrative determination, but the Act requires no formal review or approval by the Attorney General.

The answer to the second question may also be determined from the language of the statute. Section 4813 provides that if a determination of laxity and permissiveness has been made,

" . . . the Department of Environmental Protection and the Maine Land Use Regulation Commission shall, following consultation with State Planning Office, with respect to these shoreland areas, adopt suitable ordinance for these municipalities." (emphasis added)

This language is mandatory. It is true that the statute does not specify a firm date by which a determination of laxity or permissiveness must be made, but once it has been done, there is no discretion granted to the Board and Commission to delay the imposition of a suitable ordinance on the municipality concerned.

CH/cmf


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