

# MAINE STATE LEGISLATURE

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February 3, 1975

Carl Laws, Executive Director  
Saco River Corridor Commission  
Cornish, Maine

Re: Appointment of Commissioners

Dear Carl:

You have inquired as to whether Section 4 of the enabling act of the Saco River Corridor Commission (P&S.L. 1973, Chapter 150) requires or merely permits member municipalities to appoint representatives to the Commission.

The Commission is a regional regulatory body designed to regulate land use within the Saco River Corridor. The corridor is defined in section 3 of the enabling act and includes generally lands bounding the Saco, Ossipee and Little Ossipee Rivers. Section 4 of the act provides that implementation of the act shall be through the Commission. The act further reads;

"The commission shall consist of one member and one alternate from each municipality whose jurisdiction includes lands or bodies of water encompassed by the Saco River Corridor. Appointments to the Commission shall be made by the municipal officers of each municipality . . . " (emphasis supplied).

The use of the word "shall" in section 4 imposes a duty on member municipalities to appoint members and alternates to the Commission.

"In common or ordinary parlance and in its ordinary signification, the term "shall" is a word of command, and one which has always or must be given a compulsory meaning; as denoting obligation. It has a peremptory meaning, and is generally imperative or mandatory. It

(continued)

has the invariable significance of excluding the idea of discretion, and has the significance of operating to impose a duty which may be enforced, particularly if public policy is in favor of this meaning or when addressed to public officials, or where a public interest is involved or where the public or persons have rights which ought to be exercised or enforced unless a contrary intent appears." Black's Law Dictionary (4th Ed. 1951) quoting People v. O'Rourke, 124 Cal.App. 752, 13 P.2d 989, 992.

Such a duty seems consistent with the purpose of the act. Since the Commission can regulate land use within the boundaries of member municipalities, citizens of each such municipality are entitled to adequate representation on the Commission. Municipal officers cannot elect not to participate in the Commission's activities and thereby effectively disenfranchise citizens thereof. It is clear in this case that public officials, public interest and public rights are involved. The municipal officials of the member municipalities are, therefore, required to appoint members to the Commission.

Very truly yours,

John M.R. Paterson  
Assistant Attorney General  
Environmental Protection Division