

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date February 5, 1975

To Abbie C. Page

Dept. State Planning Office

From Cabanne Howard, Assistant

Dept. Attorney General

Subject Power of Regional Planning Commissions to Perform Certain Functions Under Coastal Zone Management Plan.

You have asked whether the Regional Planning Commissions of the State have the legal authority to undertake certain responsibilities which the State Planning Office proposes to assign to them pursuant to the Coastal Zone Management Plan which it is preparing to satisfy the requirements of the federal Coastal Zone Management Act of 1972, 16 U.S.C. §1451 et seq. The specific powers which it seeks to have the commissions exercise are: (1) coordinate teams of federal, state and regional planning commission planners and other experts to assist town, town planning boards, and developers in planning development in coastal zone management areas; (2) (a) make available code enforcement officers with whom towns may contract for the enforcement of coastal zone management plans which they may develop, (b) hire legal assistants to assist District Attorneys in enforcing or defending the legalities of such plans and (c) house field officers from the Maine Department of Environmental Protection who will make recommendations to the Board of Environmental Protection to ensure that the Board's actions on land use permits in coastal management areas are consistent with such plans; and (3) form voluntary policy advising committees to advise constituent towns as to regional planning considerations which may affect their planning, as well as to advise state governmental units of such considerations so that a state level policy may be developed.

Section 4511 of the regional planning commissions' enabling legislation, 30 M.R.S.A. §4511 et seq., establishes that the purposes of such commissions shall be:

"to promote cooperative efforts toward regional development, prepare and maintain a comprehensive regional plan, coordinate with state and federal planning and development programs and to provide planning assistance and advisory services to municipalities."

The activities described in (1), (2) (c) and (3) above, all involve the rendering of advice and coordination services to both municipalities and state agencies regarding one particular planning concern: coastal zone management. They, therefore, are squarely within the powers of a regional planning commission. Only the activities described in (2) (a) and (b) present difficulties, in that they appear to involve the enforcement of regional or local plans. The section quoted above, which is the only provision specifying the powers of a regional planning commission, delegates no powers of enforcement to such a commission, and the commission cannot, therefore, hire or otherwise direct the work of persons engaged in such activities. This would appear to proscribe, therefore, the "hiring" of legal assistants contemplated by (2) (b) above, as well as the direction of code enforcement officers contemplated by (2) (a) above. A Commission's constituent municipalities could, of course, join together to hire such persons, but the commission itself could play no role in their activities.

You have also asked, in the event that the commissions could not be found to have the authority to undertake enforcement activities, whether the inclusion of a provision similar to 30 M.R.S.A. §1983(2) in their enabling legislation would provide such authority. That section with reference to councils of governments, provides:

"The council may, by appropriate action of the governing bodies of the member municipalities, exercise such other powers as are exercised or capable of exercise separately or jointly, by the member governments and necessary or desirable for dealing with problems of local concern."

Since the municipalities of the state, if not by virtue of specific enabling legislation such as 30 M.R.S.A. §1953, certainly by virtue of the provisions of the state Constitution and statutory law regarding home rule (Constitution of Maine, Article VIII -A; 30 M.R.S.A. §1917), have the power to hire law enforcement officers and assistants, such a provision would be sufficient to permit the regional planning commissions to exercise whatever powers, enforcement or otherwise, that their constituent municipalities conferred upon them. In order to be absolutely certain, however, it might be well to state specifically in such legislation that the commissions may (1) hire counsel and (2) hire and make available to their constituent municipalities code enforcement officers.



CABANNE HOWARD

Assistant Attorney General

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