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STATE OF MAINE

Inter-Departmental Memorandum Date August 1, 1975

To: James B. Longley, Governor

Depr. Executive

Joseph E. Brennan, Attorney General

Depr. Attorney General

Subject: County Eligibility to be Prime Sponsors for CETA Funds

This is in response to the memorandum from your office dated July 17, 1975, raising several questions regarding eligibility of county governments to be prime sponsors eligible to receive funds under the Comprehensive Employment and Training Act of 1973 (P.L. 93-203) (CETA). A response to this question requires an analysis of whether Maine counties have sufficiently broad powers to be included within the definition of a "unit of general local government" which can be a prime sponsor. The CETA Act provides:

"Unit of general local government" means any city, municipality, county, town, township, parish, village or other general purpose political subdivision which has the power to levy taxes and spend funds, as well as general corporate and police powers." P.L. 93-203, § 601(a)(10).

As noted in my memorandum to your office of March 17, 1975, the question of whether Maine counties have the legal authority to be included within this definition and thus be eligible for CETA funds as prime sponsors is ultimately a federal question to be determined by the Department of Labor. That determination has apparently been made as indicated in the memorandum from the Solicitor of the Labor Department to the Assistant Secretary for Manpower dated April 7, 1975. It is obvious, however, that we may offer some guidance to the Department of Labor in interpreting the powers of our county governments.

An examination of the powers of county governments and a comparison with CETA to determine eligibility under CETA requires answers to two questions:

1. Are Maine counties units of general local government? and
2. If counties are units of general local government, do they have sufficient powers to levy and spend funds and exercise police powers as are required of CETA prime sponsors?

The law specifically lists counties among those units of government intended to be included in the definition unit of general local government. In explaining the law, the House Committee report states that:

"It should be emphasized that not every unit of local government with the designated population can qualify. It is only those local governments which have 'general powers.' In other words, school districts, sanitary districts and other governmental agencies which do not have the range of functions typical of a city, such as general police and tax powers do not qualify the prime sponsorship." U.S. Code Congressional and Administrative News, 93rd. Congress First Session, 1973, Vol. 2, Page 2941.

All of the types of units of government barred by the House Committee report have specifically limited functions. This is not the case with Maine counties. Maine counties may exercise a broad range of functions which may vary, according to legislative authorization, from county to county. Maine counties are not authorized for any specific limited purpose. Like municipalities, counties are territorial subdivisions of the State with powers granted by the Legislature in certain general areas.

A recent indication of legislative intent that counties have rather broad functions can be found in P.L. 1973, c. 661 (30 M.R.S.A. § 255) where the Legislature granted counties authority to accept and expend federal funds for any purpose for which federal grants may be available to counties. Though this law was designed to facilitate counties accepting revenue sharing funds (see Statement of Fact, L.D. 2120, 106th Legislature), the law expresses a clear intent that counties should be able to receive any money which the Federal Government might be willing to give to them. The law does include a caveat, in sub-§ 3, that it does not in any way expand the power of counties, but the caveat does not detract from the clear intent that counties may accept funds for a wide range of functions unlike the limited purpose school districts or sanitary districts discussed in the House report. Thus it is clear that counties have sufficiently general powers to be considered units of general local government with general corporate powers. (Little question has been raised as to corporate status of counties. They can sue and be sued, enter into contracts, issue

notes, etc.; that matter is not discussed in this opinion.)

The next question concerns whether Maine counties have sufficient power to levy taxes and spend funds. The counties clearly have power to spend and do spend in such areas as sheriffs departments, courts, registries of deeds, care of neglected children, food stamps and other county functions. The key question in this area is thus whether counties have adequate taxing powers. 30 M.R.S.A. §§ 251 through 254 provides the counties power to allot and assess taxes against municipalities, prepare budgets to be approved by the Legislature and reallocate resources within departments without legislative approval. 30 M.R.S.A. § 407 provides counties power to raise money by short term loans to be repaid by taxes. 30 M.R.S.A. § 751 provides counties authority to enforce payment of taxes. True, county budgets must ultimately be approved by the Legislature, but complete budgetary autonomy is not a precondition to being a unit of general local government under P.L. 93-203. The county initially prepares the budget. The county apportions the taxes among the towns. The county can enforce payment of its taxes. These are the necessary incidents of the power to levy taxes specified in P.L. 93-203, and Maine counties have such powers.

In addressing the question with respect to police powers, it must be recognized that what exactly is police power cannot be defined, York Harbor Village Corporation v. Libby, 126 Me. 537, 540 (1928). See also McQuillin, Municipal Corporations, § 2403. Police power can be many things, McQuillin, Municipal Corporations, § 2401, lists nearly 40 general areas of potential local police power activity. Few communities are likely to possess all of these. With that as a given, the question becomes how many incidents of police power is enough to qualify a community as having "general" police powers for purpose of prime sponsorship CETA eligibility. In examining this area, one key point to look at is the regulation of streets. In discussing police powers, McQuillin notes:

"Police regulation of the use of streets always has been, and, in all probability will continue to be, the largest municipal activity." McQuillin, Municipal Corporations, § 2401.

This power the counties clearly have. Title 23 M.R.S.A. Chapter 203 gives counties power to lay out highways. Counties have power to regulate activity on these highways under their general law enforcement powers (discussed infra.)

In addition to power over highways, which is recognized as a key incident of police power, each Maine county has a law enforcement agency with general law enforcement powers headed by a county sheriff whose position is established by Article IX, Section 10, of the Maine Constitution. These county sheriffs, paid from county budgets, in turn appoint deputies whose power it is to "enforce the criminal laws in said counties," 30 M.R.S.A. § 958. Under this provision, sheriffs and deputy sheriffs exercise general police powers to enforce all state laws. Other incidents of police power exercised by counties include the provision of 22 M.R.S.A. § 3791 authorizing sheriffs to act to protect neglected children, the directive to county sheriffs departments in 25 M.R.S.A. §§ 1542 and 1543 to participate in criminal justice information systems and the general authority of counties in 30 M.R.S.A. § 301 to maintain buildings for courthouses, jails, registries and of probate and insolvency.

While the county legislative body, the county commission, does not possess great authority with regard to enacting police power ordinances; this is not critical in examining police power questions in the context of CETA eligibility for it is clear that the county enforcement agencies have sufficient police powers. In addition to those powers enumerated above, county commissions do have some affirmative authority, pursuant to police powers, in such areas as laying out roads, 23 M.R.S.A. Chapter 203 or developing ferry service, 23 M.R.S.A. Chapter 213. Thus counties do play a sufficiently general role in police power functions reserved to the states by the Tenth Amendment of the United States Constitution to qualify as agencies exercising general police powers for purposes of CETA eligibility.

Thus we conclude that county governments in Maine may be prime sponsors eligible to receive funds pursuant to P.L. 93-203. We take this view because of our analysis of Maine law, and because we believe this is principally a federal question which has been answered already in several communications to you, including the opinion of the Solicitor of the Labor Department dated April 7, 1975; the letter to you from the Secretary of Labor, dated July 2, 1975; and the letter to you from Raymond P. Schaffer, Counsellor to the President, dated July 17, 1975. (All attached hereto)

We also note that counties are considered units of general government for purposes of revenue sharing (P.L. 91-512 § 108(d)), and the legislature specifically considered and approved this status for counties in adopting 30 M.R.S.A. § 255.

Your memorandum also poses the question of whether our office will represent the Governor's office in challenging the above cited determinations of the Federal Government.

In light of the above analysis, we do not believe that such a challenge would have merit, and therefore we could not represent your office in such a suit. In addition, we would be extremely hesitant to authorize expenditure of state funds to maintain such a suit or to authorize your staff or outside counsel to institute such litigation in the name of the State.

JEB/mf

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20210



JUL 2 1975

Honorable James B. Longley
Governor
State of Maine
Executive Department
Augusta, Maine 04330

Dear Governor Longley:

Thank you for your detailed and thoughtful letter of June 13, 1975, regarding the eligibility of Maine counties as prime sponsors under the Comprehensive Employment and Training Act of 1973, as amended (CETA).

I have carefully reviewed your letter and the points it raises. I continue to believe, however, that our original judgment regarding eligibility was correct, and I wish to reaffirm that judgment. Your letter, however, deserves a full response, and I wish to share with you the reasons for reaffirming our earlier determination.

In your letter you note some of the more limited responsibilities of Maine counties. You state that such limited responsibilities are not consistent with a general purpose local government, as required by CETA. In our review of Maine counties, however, we noted a fairly diverse number of activities allowed by the legislature and with which the counties are charged. As stated in the Solicitor of Labor's memorandum, counties in Maine perform various duties consistent with the responsibilities of a general purpose local government. In addition, Maine counties may expend funds in cooperation with federal agencies in connection with programs generally carried out, on the local level, by general purpose governmental units. The counties have authority to operate a "food stamp or donated food program" in cooperation with the United States Department of Agriculture and the United States Department of Health, Education, and Welfare (MRSA 30:416). Counties also have authority to operate a "priority social services program" in cooperation with the Maine State Department of Health and Welfare (MRSA 30:419, 420).

We do not cite these activities as implying that Maine counties have authority identical to the authority of Maine municipalities or that they have the same range of functions. We do believe, however, that it was the intent of Congress to provide funds to those general governmental units meeting the population criterion that are closest to the people and are multi-purpose in nature. Congress did not want "special purpose" governmental districts becoming CETA prime sponsors, but it had no intention to restrict general purpose governmental units otherwise eligible. (H.R. Rep. No. 659, 93d Cong., 1st Sess. p.7 (1973)).

In your letter you also discussed the range of county police powers. Within their sphere of influence we believe that Maine counties do possess the range of police powers required by Congress for operation of the CETA program. The Solicitor's memorandum, I believe, sets out our views in some detail on this point.

Regarding the taxing powers of the counties, your letter attempts to draw a distinction between "assessment" and "levy." We do not believe that Congress was primarily concerned with the differing semantic implications of those two words. Counties, of course, as any other political subdivision, have only that authority given to them by the State legislature or the State constitution.

I wish to emphasize again, however, that prime sponsor eligibility does not guarantee a final determination of prime sponsorship. A comprehensive manpower plan must be submitted by each eligible prime sponsor and approved before funds are granted. As you know, if you believe that any county's plan is inadequate you may promptly submit your views to the Assistant Regional Director for Manpower in Boston, who will consider your views before making a determination on the county's plan (29 CFR § 95.15). Finally, I again note that your concerns about administrative overlap between the State CETA program and programs operated by the counties could be remedied through the execution of a State-wide multi-jurisdictional agreement. Such an agreement would provide administrative unification of those programs, and financial advantages to all involved. This possibility should be explored with the affected counties.

Sincerely,

John T. Dunlop

Secretary of Labor