

MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

December 18, 1975

Honorable Gail Tarr
R. F. D. #1
Bridgton, Maine 04009

Re: Applicability of Right to Know Law to Municipal Planning
Boards

Dear Rep. Tarr:

Your letter to Gordon Scott of December 12, 1975, has been forwarded to me for reply.

Title 1 M.R.S. §402 defines "public proceedings". While §402 is in two forms (apparently through Legislative error, two separate versions having been enacted by the 107th Legislature) both definitions include the transaction of functions by a municipality with which function it is charged by statute. In this case, the municipality of Bridgton is transacting the function imposed upon it by Title 30 M.R.S. §4956, the review of subdivisions. Therefore, its actions and procedures are a "public proceeding" and it is subject to the provisions of the so-called Right to Know Law.

In acting upon a subdivision application, the planning board is acting in a quasi-judicial capacity. That is, it is applying the standards in Title 30 §4956(3) to the facts of the particular application much as a court applies the law to the facts in each case.

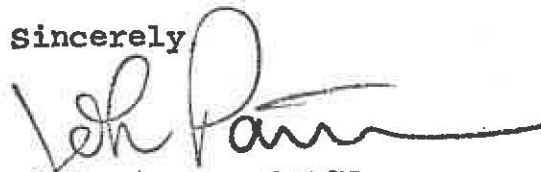
Section 404 of Title 1 M.R.S. discusses the circumstances under which agencies can hold executive sessions. Again, however, two versions of §404 were enacted in the 107th Legislature. Unlike the two versions of §402, these two sections are dramatically different. See P.L. 1975, c. 422, §2 and 483, §4. In order to reconcile these two divergent forms, we must make reference to the rules of construction as stated in Opinion of the Justices, Me. 311 A2d 103 (1973). In general the rule is that:

"if two legislative enactments relate to the same subject matter and come from the same legislative session, neither enactment is to be regarded as effecting a total repeal of the other; rather, as many of the provisions of each enactment will be given full effectiveness as are consistent with a single harmonious whole which may be reasonably perceived as the legislative purpose. (citations omitted) Thereafter, any specific provisions to which full effectiveness cannot be assigned because of unavoidable inconsistency becomes subject to additional principles effecting statutory construction requiring that the provisions of one enactment must give way to those of the other as impliedly repealed", Opinion of the Justices, supra at 108.

In this case we read the above rule as mandating that the earlier of the two versions of §404 (Chapter 422, §2), being the more specific, is the controlling section. That section provides that an agency may deliberate in an executive session when acting in a quasi-judicial capacity. In the case posed by you, the planning board may hold such executive session provided (1) that it is held only after a vote to do so by three-fifths of the members of the board present and voting, (2) that they shall first indicate the nature of the business to be discussed, (3) that no other business shall be discussed in such session, and (4) that no final action shall be taken, (i.e. approval, disapproval or approval with conditions) in such executive session.

I hope this answers your question. If you need any further information, please do not hesitate to contact me. r

Sincerely



JOHN M.R. PATERSON
Assistant Attorney General
Natural Resources Division