Municipalities; Interlocal Cooperation

Water Pollution Planning 30 MRSA 1951 et seq

# STATE OF MAINE

Inter-Departmental Memorandum Date October 19, 1976

To Ruppert Jennings Dept. D.E.P.

From Cabanne Howard, Assistant Dept. Attorney General

Subject Implementation of 208 Planning by Public Agencies Through the Interlocal Cooperation Act.

You have asked two questions regarding the uses to which the Interlocal Cooperation Act, 30 M.R.S. §§1951-58 may be put with regard to areawide waste treatment planning carried out in pursuance of Section 208 of the Federal Water Pollution Control Act, 33 U.S.C. §1288. The precise nature of your first question is not clear. You appear to be asking either whether two or more municipalities may enter into an interlocal agreement to implement a 208 plan, or whether one or more municipalities may enter into such an agreement with one or more sanitary districts. Your second question, which is quite clear, is whether if the answer(s) to the first question(s) is (are) in the negative, the Interlocal Cooperation Act may be amended to remove the limitation, whatever it may be.

Your first question cannot be answered with finality in the absence of the knowledge of precisely what governmental functions will be the subject of the proposed interlocal agreement. Generally, however, the answer which you suggest in your memorandum is correct; a municipality or a sanitary district can only enter into an interlocal agreement with regard to a matter within its powers. The main point which your memorandum, with its attachment does not make is that in Maine a municipality and a sanitary district stand on significantly different constituional footings. Since 1969, the municipalities of the State have enjoyed "home rule", under which they are permitted to exercise all powers inhering in goverment generally which are not prohibited to them, either expressly or by clear implication, by the Constitution or by statute. ME. CONST., Art. VIII, pt. 2, §1; 30 M.R.S. §1920. Thus, a Maine municipality would very likely possess the powers which might be required to implement a 208 plan (see Subsection (b)(2) of Section 208, 33 U.S.C. §1288(b)(2)), and might, therefore, enter into an interlocal agreement for 208 planning purposes with any other municipality or entity qualifying as a "public agency" under Section 1952 of the Act. */

A sanitary district, however, is in a different position. Being a creature of statute, a sanitary district can exercise only those powers enumerated in its enabling legislation (Section 1151 of the Maine Sanitary District Enabling Act, 38 M.R.S. §§1061 et seq) and can, consequently, enter into an interlocal agreement only to that extent. In view of the limited nature of these powers, therefore, it would seem unlikely that a district would possess all of the powers necessary to satisfy Section 208, the most notable power generally absent being

*/ It is worth noting with regard to the zoning power, to which your question refers as an example, that an interlocal entity could not exercise such a power without regard to the provisions of 30 M.R.S. §4962, which requires, inter alia, the existence of a comprehensive plan.

the power to plan as well as to zone to carry out a plan. Thus, the conclusion of the governmental consultant, an excerpt of whose report is attached to your request, is correct; a sanitary district probably could not enter into an interlocal agreement whose purpose is to plan and to zone. Such an agreement would only be possible between two or more municipalities.

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In view of the fact that barriers to a formation of an interlocal agreement for Section 208 planning purposes lie not in the Interlocal Agreement Act itself, but in other statutes (such as the Sanitary District Enabling Act or those statute prohibiting the exercise of certain powers by municipalities), there would appear to be no point in seeking amendment of the Interlocal Agreement Act. Thus, the answer to your second question is not so much that the Act may not be amended, but that it does not appear to be the appropriate vehicle for achieving the desired result. The more profitable route would seem to be to identify the precise statutory barrier to the exercise of a specific power by a particular party to an interlocal agreement, and then seek to eliminate that barrier by legislation.

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