

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

June 21, 1977

Allen Pease, Director
State Planning Office
State House
Augusta, Maine 04333

Dear Mr. Pease:

You have asked this office to interpret the Department of Housing and Urban Development (HUD) regulations concerning Regional Planning Commission (RPC) eligibility requirements for planning funds available under Section 701 of the Housing Act of 1954. Under a regulation implementing that Act, an RPC is eligible to receive such funds only if it is open to "membership" to all municipalities within its jurisdiction and includes "representatives" of municipalities which contain seventy-five percent of the population of the planning district. 24 C. F. R. 600.40(b)(2)(i) and (ii). You have asked whether, in order to count toward the seventy-five percent requirement, a municipality must be paying dues to the RPC.

Our first response to this request must be to observe that the opinion of this office cannot be regarded as authoritative on a question of interpretation of federal regulations. The opinion of the agency promulgating a particular regulation is generally accorded deference by the courts, unless clearly unreasonable. Nonetheless, we are willing to express our view on the question presented, particularly since it does not appear to be inconsistent with that of the federal agency involved.

Our answer to your question is that a municipality need not be contributing dues to be considered "represented" in an RPC, but we further advise that in order to be considered as being "represented" it must have full voting powers in the RPC.

June 21, 1977

The first determination we have made in reaching this conclusion is that we can perceive no meaningful distinction between the terms "membership" and "representative" in the regulation. Although it is conceivable that the regulation meant to encompass a greater group of municipalities in the term "membership" than in the term "representative," there is nothing in the regulation which would support such a view. Absent such a clear expression of intent on HUD's part, we would interpret the terms to be synonymous.

The question then becomes, what does "membership" or "representation" mean? We would suggest that "representation" (and therefore "membership") connotes some ability to control the activities of the organization in question. Hence, we would advise that in order to count as being "represented," a municipality must be able to vote in the RPC. This view is supported by the language of the regulation itself, which provides, in Section 600.40(b)(2)(iv), that two-thirds of the "voting membership" of the RPC be composed of municipalities who are responsible to elected officials. If "membership" in this section must be "voting membership" and "membership" and "representation" are synonymous, then "representation" must also mean "voting representation," and only those municipalities who vote in an RPC may count toward the seventy-five percent requirement of Section 600.40(b)(2)(ii). As indicated above, we concede that HUD may have had a more complex interpretation in mind when it promulgated these regulations. If it did, however, it certainly did not make itself clear. Consequently, we would suggest that the only reasonable course is to treat all of the terms in question as meaning the same thing: voting membership or voting representation.

This leaves only your original question as to the status of municipalities which do not pay dues to the RPC. Not only is the regulation silent on this point, but so is the Maine statute authorizing the establishment of RPC's, 30 M.R.S. §§4511 et seq. Nowhere in either place is membership/representation made contingent on the payment of dues. Consequently, we could not say that the failure to pay dues divests a municipality of membership/representation in an RPC. An RPC may so provide in its by-laws, but the statutes and regulations are silent. Thus, it would appear that the only criterion for judging membership/representation is the presence or absence of voting power.

I hope this answers your question.

Sincerely,



CABANNE HOWARD
Assistant Attorney General

CH/bls