Municipal development districts
30 MRSA § 4863

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Honorable Robert MacEachern
18 East Broadway
Lincoln, Maine 04457

Dear Representative MacEachern:

We are responding to your letter of July 22, 1977, in which you asked two questions concerning interpretation of L.D. 1482, "AN ACT Authorizing Municipalities to Create Development Districts." This legislation, which was enacted as P.L. 1977, Chapter 397, contains provisions for establishing a development district, determining a program for development, and making assessments to fund the projects. We will discuss your questions with regard to this legislation separately below.

Your first question concerns the new 30 M.R.S.A. § 4863. The section provides in sub-§ 1 that a municipal referendum be held to approve designation of the area in a municipality which will be a development district. Sub-§ 2, concerning adoption of a program for the district, reads as follows:

> "The governing body of a municipality shall adopt a development problem for each development district. The program shall be adopted at the same time as the district, as part of the district adoption proceedings, or if at a different time, in the same manner as adoption of the district, with the same notice, hearing and consultation requirements of subsection 1. Once approved, the program may be altered or amended only after meeting the requirements for adoption under this subsection."

Your question arises from the ambiguity in the quoted subsection which refers first to "the same manner as adoption of the district" - which would include a referendum - and then mentions "the same notice, hearing and consultation requirements" - without reference to a

referendum. This ambiguity is one which cannot be resolved by reference to the "plain language" of the section, for it is this language which gives rise to the ambiguity. Therefore, it is appropriate to examine the legislative history of this section in order to determine the legislative intent, which, of course, is the object which statutory construction seeks to achieve. Cf. Gilman v. Jack, 148 Me. 171 (1952); Hutchins v. Libby, 149 Me. 371 (1954).

As originally drafted, L.D. 1482 would not have required a referendum for establishment of a development district. However, there were notice, hearing and consultation requirements found in sub-§ 1 of § 4863, and these are the requirements of which reference was made in sub-§ 3 on adoption of a program. Conference Committee Amendment "A" (H-590) amended sub-§ 1 as found in the original L.D. by including the requirement of a municipal referendum for designation of the district. The Conference Committee Amendment also struck the original sub-§§ 2 and 3 and inserted the present sub-§ 2 concerning adoption of the program. This new sub-§ 2 retained pertinent language of the previous sub-§ 3, i.e. notice, hearing and consultation requirements, without change. In addition, the Statement of Fact for the Conference Committee Amendment "A" included the following sentence: "The amendment will also require approval of a district designation by municipal referendum before the designation can be effective." (emphasis provided). There is no reference to adoption of the program by referendum; only adoption of the district designation.

In light of the foregoing, it is our opinion that the Legislature intended and we construe the subsection to mean that the procedure for adoption of a program for the district must be the same as the procedure for designation of the district insofar as that procedure relates to notice, hearing and consultation, but that a referendum is not necessary for this purpose.

Your second question concerns the notice and hearing provisions of the new 30 M.R.S.A. § 4865, sub-§ 3. The subsection requires that a notice and hearing be given before estimating and assessing a development assessment under sub-§ 1 or a maintenance assessment under sub-§ 2 of that section. You ask whether this assessment hearing is to be held prior to or following a referendum vote. We assume, in light of our answer to your first question, that the referendum vote you refer to is the referendum for designation of the development district. It is our opinion that the notice and assessment hearing would necessarily have to follow designation of the district and adoption of a program, for until these latter two steps are taken, there is no basis upon which an estimate could be made and no legal authority for actually making an assessment on property within the district. Furthermore, the wording of 30 M.R.S.A. § 4865, sub-§§ 1 and 2 clearly indicates that the process of estimating and assessing

both the development and maintenance assessments must wait until improvements in the district are completed and those who benefit from the improvements are identified. Subsection 1 provides for assessment on ". . . lots or property that have been benefited by improvements constructed or created under the development program and shall not exceed a just and equitable proportionate share of the cost of the improvement." Not only is the reference to construction or creation in the past tense, but it would not be possible to know the cost of the improvement, for purposes of dividing it proportionately, until the improvement is completed. The same rationale applies to the maintenance assessments under sub-§ 2. Therefore, it is our opinion that the notice and assessment hearing provided for in sub-§ 3 must wait until after the designation of the district and adoption of a program and completion of the developments constructed or created pursuant to the program.

It should be noted with regard to your second question that since the question of assessments is one which may be of interest to municipal voters in considering how to vote on a designation referendum, and since there is no prohibition against considering such assessments prior to the referendum, it may be appropriate to present and discuss the anticipated assessments at an earlier date, even though there is no authority to actually make the assessments until after improvements in the district have been constructed or created and the recipients of benefits are identified.

Sincerely,

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Assistant Attorney General

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