

MAINE STATE LEGISLATURE

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Inter-Departmental Memorandum Date October 26, 1977

To Markham L. Carikley, Secretary of State Dept. Secretary of State

From Joseph E. Brennan, Attorney General Dept. Attorney General

Subject Interpretation of Administrative Procedure Act, P.L. 1977, C. 551

This opinion is written in response to your request for an interpretation of the effective date of section 4-A of Chapter 551.

FACTS:

Chapter 551 of the Public Laws of 1977 created a comprehensive administrative procedure act that, among other things, sets forth specific procedures governing agency rule - making, administrative hearings and appeals. Section 7 of the Act provides an effective date of July 1, 1978. Section 4-A of the Act provides an appropriation to the Secretary of State for fiscal year 1977-78. Fiscal year 1977-78 ends on June 30, 1978.

QUESTION:

In view of the effective date of Chapter 551, when is the appropriation in § 4-A available to the Secretary of State?

ANSWER:

The appropriation as contained in § 4-A is effective 90 days after the adjournment of the First Regular Session of the 108th Legislature and thus may be spent by the Secretary of State prior to July 1, 1978.

REASONING:

Section 7 of the Act which prescribes the effective date would at first appear to be applicable to and limit the effect of the preceding sections of Chapter 551. However, upon further analysis it appears that in § 4-A and § 5 there is expressed an intention that the Secretary of State take certain steps to implement the Act prior to the effective date stated in § 7. Section 4-A specifically provides an appropriation for FY 1977-78 to the Secretary of State. Section 5 requires each agency of the State to provide to the Legislature and the Secretary of State assistance in implementing the Act. Section 5 specifically requires that:

"Such assistance shall be provided both prior to the effective date, for the purpose of implementing this Act and subsequent thereto."
(emphasis supplied)

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Section 5 thus contains a clear instruction that the agencies take some action prior to July 1, 1978, and clearly implies that the Secretary of State similarly act to provide for implementation of the Act. The fact that transitional steps were contemplated would explain the provision of an appropriation to the Secretary of State prior to July 1, 1978.

Were the statute read literally to apply § 7 to all other provisions, one result would be the complete lapsing of the FY 1977-78 appropriation since the end of that fiscal year precedes the effective date. Such a result would completely nullify the legislative intent apparent in §§ 4-A and 5 that transitional steps be taken to implement the Act. Thus the appropriation would have been authorized in vain since it could not be spent.

While the ordinary rule of construction would make the effective date of the Act applicable to all provisions, reading the Act as a whole persuades us that the Legislature intended the transitional provisions to be effective prior to the operation of the substantive provisions of the Act. We are of the opinion, therefore, that the appropriation in § 4-A is effective 90 days after the adjournment of the First Regular Session of the 103th Legislature.

JOSEPH E. BRENNAN
Attorney General

JEB:mfe