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Public Notice
STATE OF MAINE

5 MRS 1635 DGA

Inter-Departmental Memorandum Date November 7, 1977

To George J. Rainville, State Auditor Dept. Audit
From Kate Flora, Assistant Dept. Attorney General
Subject Interpretation of P.L. 1977, Chapter 541, Section 1635

This memo responds to your request for interpretation of the section of P.L. 1977, c. 541, which deals with the adoption of rules.

Generally, your opinion request seeks advice on the meaning of the subsections dealing with publication and notice of the proposed rules to affected agencies. Your first question asks whether the Committee on Performance Audit should be consulted prior to the 30-day period of public comment. Subsection 1 provides that the proposed rules are to be drafted in consultation with the Committee. Therefore, this section anticipates that when the proposed rules are published for public comment, they will already have had input from the Committee. The purpose of the 30-day period is to enable the public and affected agencies to submit their comments on the proposed rules and enable you to review the rules in light of the proposed changes, make any desired amendments, and have the rules in final draft by January 1, 1978. If you have not already consulted with the Committee regarding the proposed rules, you could do so during the period between the end of the 30-day comment period and the deadline date for final proposed rules.

Your second question addresses itself to the actual mechanics required for publication and notice. Generally, the notice should be published in the State Paper, see 1 M.R.S.A. § 551, which is the Kennebec Journal and preferably other newspapers of general circulation throughout Maine. The notice should indicate the proposed rules affecting Human Services Community Agency accounting are published and available at your office, and should indicate that a 30-day period has been designated to receive public comments. The starting and closing dates of the period should be included. You might wish to add that to be considered, comments should be submitted in writing. It is not necessary to publish this notice every day for 30 days.

In addition to this general public notice, subsection 3 would appear to require notice to each affected community service agency at the time the proposed rules are published and the 30-day period for public comment commences. Although the phrase "written notice of the proposed rules" is ambiguous as to whether it intends mere notice of the availability of the rules or provision of a copy of the rules, the better course is to provide the affected agencies with copies of the proposed rules to facilitate comments.

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I note that in your question #3 you assume the publication date is January 1, 1978. This is incorrect as the statute refers to November 1, 1977, as the publication date for "proposed rules." Therefore, in response to that question, sufficient notice as required by subsection 3 would be written notice to all affected agencies. If you decide not to distribute copies to the affected agencies, sufficient copies should be available at your office to respond to requests for copies from the affected agencies. The existence of a copy in the State Law Library or with the Secretary of State is not adequate provision for the availability of the proposed rules for public comment.

KATE C. FLORA
Assistant Attorney General

KCF:mfe