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Subdivision Law Enforcement
Municipalities' Subdivision Law
Attorney General's Authority
30 M.R.S.A. §4956

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To: Allen Pease, Director, State Planning Office

From: Joseph E. Brennan, Attorney General

Subject: Attorney General's Role in Enforcing the Subdivision
Law (30 M.R.S.A. §4956)

This opinion is in response to your question concerning the Subdivision Law. The question posed was "If a town consistently disregards the standards contained in the Subdivision Law (30 M.R.S.A. §4956), and further, if these deviations are considered to be significant, does the Attorney General have the legal authority to require towns that consistently and substantially disregard the standards set out in 30 M.R.S.A. §4956 to conform to the law in their review of subdivisions.

The Attorney General in Maine inherited common law power from England. Withee v. Land & Libby Fisheries Co., 120 Me. 121 (Me. 1921). As the chief law enforcement officer of the State he has wide authority to protect the interests of the State and its citizens:

". . . . as the chief law officer of the State, he may, in the absence of some express restriction to the contrary, exercise all such power and authority as public interest may from time to time require, and may institute, conduct, and maintain all such suits and proceedings as he deems necessary for the enforcement of the laws of the State, the preservation of order, and the protection of public rights. Withee, p. 23.

The Court in Withee called the Attorney General's powers "numerous" and "varied," Id. at 23.

In Lund Ex Rel Wilbur v. Pratt, 308 A.2d. 554 (Me. 1973), the Law Court expressly recognized that the Attorney General is a constitutional officer deriving this status from Article IV, Section 11. The Court, stressed that he has the power, absent an express statutory prohibition to the contrary, to maintain actions and proceedings to preserve order and protect the public's right. The Attorney General has the power to protect the entire community when an injury is shared by all equally. Von Tiling v. City of Portland, 268 A.2d. 888 (Me. 1970). In fact, he is the only person authorized to bring such suits. He has this authority because he is the representative of the people. A 1975 Massachusetts case, Secretary of Administration and Finance v. Attorney General, 326 N.E. 3d. 334 (Mass. 1975), stressed this basis for his power.

"The Attorney General represents the commonwealth as well as the Secretary . . . who requests his appearance. He also has a common law duty to represent the public interest. Id at 338.

The Maine courts concur:

"The chief law officer represents the whole body politic, or all the citizens and every member of the State. Only a few of the duties of the Attorney General are specified by statute; that official is, however, clothed with common law powers. It is for him, in instances like these to protect and defend the interests of the public."
In Re Maine Central Railroad Co. et al., 134 Me. 217 (Me. 1936).

I. Attorney General's Power to Bring Mandamus Action.

One of the common law powers of the Attorney General is the power to proceed against public officials in order to protect the best interests of the State. The cases in Maine and elsewhere have recognized that the Attorney General has the power to institute mandamus proceedings. The mandamus action is a proceeding to require the official or officials to do something they are required by law to do. Rogers v. Brown, 134 Me. 88 (Me. 1935).

It is generally conceded that a mandamus action by the Attorney General is authorized by his common law powers. Although Maine has abolished the writ of mandamus (a procedural device) the substantive cause of action remains and may be brought pursuant to Rule 80B Me. R. Civ.P. In determining whether mandamus must be had however, recourse must be made to the common law. Young v. Johnson, 161 Me. 64, 69 (1965).

In Kelley v. Curtis, 287 A.2d. 427 (Me. 1972), the Law Court had before it a mandamus action brought under Rule 80B, Me. R. Civ. P. The Plaintiff, a petition sponsor, sought to require the Governor of Maine to issue a proclamation of special election within a reasonable time after presentation to the Legislature of a petition seeking a ballot reform. The Legislature, before it adjourned, determined the reform measure was validly initiated. The Governor had not issued an order for six months following the adjournment, and suit was filed. By law, the Governor was required to call a special election "within a reasonably short time" after adjournment. The Court apparently had no problem with the 80B process. Both the Superior Court and the Law Court entertained the proceeding initiated under 80B. The Court did express some concern over the standing of the petitioner to proceed, but since it did not need to reach the standing issue, it was not discussed. In Farris, ex rel Dorsky v. Goss, 143 Me. 227 (1948), the Court allowed a private group to use the Attorney General's unique position of standing to bring a mandamus action to compel the Secretary of State to place an "initiated measure" as well as the enacted measure on the ballot so the voters could decide which they preferred. The Court had no problem with allowing the Attorney General to bring such an action.*/

The power of the Attorney General to bring mandamus actions has been recognized in other jurisdictions. In Attorney General v. Trustees of Boston Elevated Railroad, 67 N.E. 2d. 676, 685 (Mass. 1946), the Supreme Judicial Court of Massachusetts recognized the Attorney General's power to proceed against public officers by mandamus. A Texas Court, in Yolt v. Cook, 281 S.W. 837, 843 (Tex. 1926), recognized that the "ancient and modern rules of common law," allowed the State and Attorney General the power to use mandamus proceedings in supervising municipalities.

*/ In McCaffrey v. Gartley, 377 A.2d.1367 (Me. 1977), a similar action was brought without invoking the Attorney General's powers.

The mandamus action serves a very specific purpose. Its use is restricted to cases in which it is clearly shown that an official has neglected or refused to do something required by law. In Littlefield v. Newell, 85 Me. 246 (Me. 1893), the Maine Attorney General filed a mandamus action against the mayor and aldermen of Lewiston to force them to comply with the town's charter and ordinances.

"It is a well-settled rule that mandamus extends to all cases of neglect to perform an official duty clearly imposed by law when there is no other adequate remedy. If the officers are required to act in a judicial or deliberative capacity, the court cannot, if it is true, control their official discretion, but may by its mandate compel them to exercise it. It cannot direct them in what manner to decide, but may set them in motion and require them to act in obedience to law. p. 111.

See also, Rogers v. Brown, supra and Mitchell v. Boardman, 10 A. 542 (Me. 1887), on protecting public rights.

II. Attorney General's Power to Appeal Local Administrative Decision.

The Subdivision Law (30 M.R.S.A. §4956 subsection 5) permits the Attorney General to enforce the law although it is generally envisioned that the Attorney General will only do so under extraordinary circumstances and hopefully with the aid of the municipality. In a joint memorandum filed by the Attorney General and the Maine Municipal Association, dated March 2, 1972, this office felt an 80B appeal under the Maine Rules of Civil Procedure would be available to those affected by decisions of the municipal authority. It seems clear that nothing prohibits the Attorney General from enforcing the law by requiring the municipality to abide by its requirements. The Attorney General's principal function is to protect the public interest and to maintain all suits and proceedings to enforce the laws of the State. Withee v. Libby Fisheries Company, supra at p. 123. Should he not carry out these functions, he would be violating his responsibilities

to the public. If a decision by the municipal authority in a subdivision case was so contrary to the dictates of the statute, the Attorney General might appeal from such a determination. Apparently, the exact question has not been ruled upon in Maine, although it is presently in front of the Law Court in Central Maine Power Co. v. Public Utilities Commission, (Law Ct. Docket No. Ken 73-43).

Other states have recognized that the Attorney General has the power to appeal from the decisions of agencies when the public interest is involved. In a Nebraska case, In Re Equalization of Assessment of Natural Gas Pipe Lines v. State ex re Soreman, 242 N.W. 609 (Neb. 1932), the power of the Attorney General to petition for a writ of error in the Supreme Court from a tax board's decision was recognized. And in a New Jersey case, Attorney General v. Delaware & B. B. R. Co., 27 N.J.Eq. 631, the court held:

"In equity, as in the Law Court, the Attorney General has the right, in cases where the property of the sovereign or the interests of the public are directly concerned, to institute suit by what may be called 'civil information' for their protections. The state is not left without redress in its own courts, because no private citizen chooses to encounter the difficulty of defending it, but has appointed this high public officer on whom it has cast the responsibility, and to whom, therefore, it has given the right of appearing in its behalf and enriching the judgment of the Court on such questions of public moment. Id. p. 610.

Other cases in accord, Petition of Public Service Coordinated Transport et al., 74 A.2d. 580, 586 (N.J. 1950) and State ex rel Olsen v. Public Service Commissioner, 283 P.2d. 594 (Mont. 1955).

There seems little question that the Attorney General can bring suit against a recalcitrant town to require it in the future to apply the Municipal Subdivision Law or challenge subsequent decisions which substantially deviate from it. We would note that the Attorney General retains discretion with regard to bringing any particular action, and the decision on bringing an action would relate to the seriousness of the violation of law and the availability of resource of the Department to properly prosecute the action.


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