

# MAINE STATE LEGISLATURE

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*Administrative Procedure Act, Maine Health Facilities Authority,  
Maine Health Facilities Authority, Administrative Procedure Act*

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DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

December 28, 1977

Robert Patterson  
Verrill & Dana  
Two Canal Plaza  
Portland, Maine

Dear Bob:

At the request of the Maine Health Facilities Authority (MHFA) as transmitted by you, I have reviewed the Authority's enabling statute, 22 M.R.S.A. § 2051, et seq. to determine the applicability of the Administrative Procedure Act ("APA"), P.L. 1977, C. 551, to the Authority. Having reviewed both those acts, it is my opinion that the Authority is not a state agency within the meaning of the APA.

The MHFA is a body of state government that exists to assist hospitals in financing new projects or in refinancing existing debt. The MHFA generally finances such projects in its own name by the sale of bonds and upon payment of the principal, interest and other costs of the financing of the project transfers title to the participating medical institution. In making its decisions and in carrying out its duties, the MHFA reviews and approves or rejects applicants for such assistance based upon determinations of need and cost and provided that adequate provision is made for repayment of the project costs by the medical institution. Approved projects may be limited in use pursuant to particular rules established by the MHFA for the project.

In contrast, the APA is a statute designed to provide uniform standards of conduct and procedure for state agencies. "State agencies" are defined in the APA to include any body of government authorized to "adopt rules, issue licenses or take final action in adjudicatory proceedings." The acts of licensing, rule-making and adjudicating are in turn defined in § 8001 of Title 5 in the APA. Without quoting in detail these various definitions, suffice it to say that the general thrust of the provisions is to encompass these actions of state government that represent an exercise of the police power or regulatory functions of government. These functions are distinct from those functions of government such as fund raising


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(e.g. selling state securities) or the distribution of State monies (e.g. state financial grants, welfare or unemployment payments, loans or loan guarantees).

In reviewing in toto the powers of the MHFA, it appears that its functions do not fall within the scope of the APA. The only regulatory authority conferred on the MHFA is not general in nature, but exists solely in relation to the Authority's financial operations. That is, the rules adopted by the Authority contemplate not the regulation of conduct of the public or a class of persons or institutions, but rather are in the nature of a contractual limitation imposed on a particular participant hospital and designed on an ad hoc basis. Given then general intent of the APA, it appears that this "rule-making" power of the MHFA, if such it can be called, is not the kind of legal authority that would place the MHFA within the ambit of the APA. Nor does the MHFA exercise licensing or adjudicatory functions as those are generally contemplated.

In summary, therefore, it is my opinion that given the function of the MHFA as currently existing, it is not now an "agency" within the meaning of the APA.

Sincerely,

  
JOHN M. R. PATERSON  
Deputy Attorney General

JMRP:mfe

cc: Gregory Sample  
Donald G. Alexander ✓  
James Smith