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Administrative Procedure Act Regulations
Railroad Regulation by State
23 M.R.S.A. 4207
5 M.R.S.A. 8054
5 M.R.S.A. 8052

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DEPARTMENT OF THE ATTORNEY GENERAL
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September 29, 1978

To: Rebecca H. Farnham, Department of Transportation
From: Sarah Redfield, Assistant Attorney General
Re: Opinion Request Regarding Maine Central Railroad

This is in response to your memo of September 13, 1978, in which you requested an opinion of the Attorney General concerning certain rules and regulations to be adopted by the Department of Transportation. You attached with your opinion request copies of correspondence between Roger L. Mallar, Commissioner of the Department of Transportation, and Scott W. Scully, General Counsel for Maine Central Railroad. In his communications, Mr. Scully raised the issue of whether the Department of Transportation would be able to proceed with negotiations concerning the Farmington Branch Operation Subsidy without having adopted rules and regulations.

The issue presented is raised by the language of Title 23 M.R.S.A. § 4207. This section provides, in pertinent part, as follows:

" * * * When in the judgment of the Department of Transportation the economic well-being of the State of Maine, or a significant portion thereof, will be impaired by the discontinuance of rail service over the railroad line or lines that have been authorized for abandonment, the Department of Transportation may contract for the continued operation of rail service over said line or lines on a temporary basis under rules and regulations to be prescribed by the department after notice and hearing at which interested parties have an opportunity to express their views, and upon such terms and conditions as the Department of Transportation and the owner of the railroad may agree upon.
* * * ." (Emphasis supplied.)

It is my understanding that subsequent to your request to this office for an opinion as to this matter, the Department of Transportation issued as emergency rules and regulations certain procedural regulations entitled "Procedures for Contractual Negotiations for Providing Continued Rail Service on Lines that Have Been Authorized for Discontinuance." It is my further understanding that the Department will, as expeditiously as possible, proceed to adopt regulations similar to those already adopted as emergency rules in a manner consistent with the Administrative Procedure Act, Title 5 M.R.S.A. § 8051- 8056.

Based on this information, it is my opinion that the adoption of these rules by emergency rule-making proceedings pursuant to Title 5 M.R.S.A. § 8054 and the subsequent adoption consistent with the notice and hearing requirements of Title 5 M.R.S.A. § 8052 and Title 23 M.R.S.A. § 4207, as cited above, will provide the necessary rule-making background for the Department of Transportation to proceed with its proposed temporary contract for continuation of service on the railroad lines in question.

I note that Mr. Scully's letter raises other issues and requests an opinion not only concerning the applicability of the Maine Administrative Procedure Act, but also certification that "the approval of any departments or officers of this state which may be required have been obtained and that the agreement when executed by Maine DOT will be valid and binding upon the State." Inasmuch as your request to this office does not indicate the need for an opinion of this kind from the Attorney General, I have not responded to this issue. It appears to me that the analysis of these matters is more appropriately within the purview of the Maine Department of Transportation's Legal Division.

If I can be of further assistance, please feel free to let me know.



SARAH REDFIELD
Assistant Attorney General

SR/ec

cc: Donald G. Alexander
William Fernald