

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

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Inter-Departmental Memorandum Date May 4, 1979

To James Datsis

Dept. Human Services-Health Engineering

From Sarah L. Downs, AAG SLD

Dept. Attorney General-Human Services

Subject Issuance of licenses to facilities required to be licensed pursuant to Chapter 562 of Title 22, Maine Revised Statutes Annotated, when such facilities are not in compliance with local ordinances.

## ISSUE:

May the Department of Human Services, Division of Health Engineering, issue a license to a facility required to be licensed pursuant to Chapter 562 of Title 22, Maine Revised Statutes Annotated, if the facility is not in compliance with all local ordinances of the municipality wherein it is located?

## CONCLUSION:

The Department of Human Services, Division of Health Engineering, may not issue a full license to a facility required to be licensed pursuant to Chapter 562 of Title 22, Maine Revised Statutes Annotated, unless the facility complies with all local ordinances relating to the operation of said facility, but it may issue a temporary or conditional license.

## REASONING:

22 M.R.S.A. §2493 provides that any person, corporation, firm or partnership desiring a license as required by §2492 shall submit satisfactory evidence of his, her or its ability to comply with the minimum standards of Chapter 562 and all regulations adopted thereunder. The prerequisites to issuance of a license are set out in §2495: that the facility comply with Chapter 562 and any rules and regulations of the Department of Human Services and that the facility submit documented proof of compliance with all local ordinances relating to the operation of the facility for which a license application has been made. When these requirements are met, the Department of Human Services is required to issue a license within thirty days after receipt of application. If the requirements are not met, there is clearly no authority to issue a full license.

The Department does have the authority to issue a conditional or temporary license when a facility fails to meet the requirements of Chapter 562 or the regulations thereunder; such issuance is not, however, mandatory. See 22 M.R.S.A. §2495.

In sum, the Department of Human Services has no authority to issue a license to a facility governed by Chapter 562 unless the facility meets the minimum requirements of said Chapter, including compliance with all local ordinances relating to the operation of the facility for which the license application has been made. If local ordinances are not complied with, the Department of Human Services has authority to issue a conditional or temporary license, but issuance of such a license is not mandatory.

SLD:bw