

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

June 12, 1979

Honorable John Michael  
House of Representatives  
State House  
Augusta, Maine 04333

Re: Agricultural Fairs

Dear Representative Michael:

This is in response to your request for an opinion concerning the "Concourse Gathering Ordinance of the Town of Hermon, Maine." You have specifically inquired as to whether such an ordinance would be applicable to an existing state agricultural fair licensed by the Department of Agriculture. To the extent such fairs come within the terms and requirements set out in Articles 3 and 4 of the Ordinance, the Ordinance would be applicable to such fairs;<sup>1/</sup> both state and local regulations would apply.

The Concourse Gathering Ordinance of the Town of Hermon, Maine, on its face, regulates all gatherings of more than 1,000 people held outdoors or in temporary structures. This definition is broad enough to include an agricultural fair. The ordinance basically requires that a permit be obtained and that certain conditions apply to such permission; see generally Article 4, Article 5, and Article 11 of the ordinance.

The authority of the Department of Agriculture regarding agricultural fairs is expressed in Title 7 M.R.S.A. Chapter 3. Title 7 M.R.S.A. § 65 prohibits "any person, agricultural society, association or corporation from holding an agricultural fair or an agricultural exhibit for competition" without a license from the Department. Similarly, Title 7 M.R.S.A. § 66 regulates sales of

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<sup>1/</sup> This opinion is limited to a discussion of municipal authority to adopt an ordinance which purports to govern agricultural fairs licensed by the state and should in no way be construed to be a commentary by this Office as to the validity or efficacy of the "Concourse Gathering Ordinance of the Town of Hermon, Maine," which you have submitted with your letter.

refreshments or other merchandise in relation to an agricultural fair; Title 7 M.R.S.A. § 67 regulates entry fees in an agricultural fair; and Title 7 M.R.S.A. § 71 provides for the officers of an agricultural society to provide for constables for certain shows and exhibitions.<sup>2/</sup>

Generally, Title 30 M.R.S.A. § 1917 provides municipalities with the authority to adopt ordinances where that power is not denied, either expressly or by clear implication.

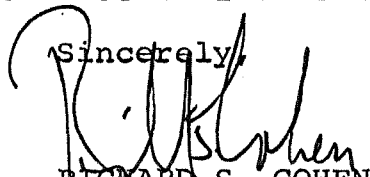
"Any municipality may, by the adoption, amendment or repeal of ordinances or by-laws, exercise any power or function which the Legislature has power to confer upon it, which is not denied either expressly or by clear implication, and exercise any power or function granted to the municipality by the Constitution, general law or charter . . . ."  
Constitution, art. VIII, pt. 2, § 1.

The applicability and scope of this provision as it relates to coexistence of state and local legislative control is discussed extensively in an opinion from Attorney General Richard S. Cohen to Senator Gerard P. Conley dated May 18, 1979, concerning the power of a municipality to adopt ordinances regulating abortion. (copy attached). Nothing in the State statute expressly or impliedly prohibits the provisions of the Hermon ordinance.

Based on the legal analysis provided in the May 18, 1979, opinion and a review of the applicable provisions of Title 7, it appears that the adoption of the ordinance at issue is within the authority of the municipality. The fact that there are additional State statutes governing agricultural fairs would not preempt the municipal authority to regulate such gatherings. Persons planning such gatherings would have to meet the terms of both statute and ordinance, and in case of conflict between the two, the statutory terms would prevail.

I hope this information will prove helpful. If you have further questions, please feel free to let me know.

Sincerely,

  
RICHARD S. COHEN  
Attorney General

RSC:vt

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<sup>2/</sup> Section 71 refers to § 69 which was repealed pursuant to the Public Laws of 1977, c. 696, § 55. Presumably, however, the use of the term "society" throughout this chapter remains indicative of agricultural societies as described in such sections as 61, 62, 72, or 73.