

MAINE STATE LEGISLATURE

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July 18, 1979

To: James B. Perkins, Jr., Acting Chairman
Workers' Compensation Commission

From: Charles D. Devoe, Assistant Attorney General

Re: Workers' Compensation Group Self-Insurance Eligibility

You have asked the following two questions:

(1) May the Augusta Water District be approved for participation in the workers' compensation group self-insurance plan of the Maine Municipal Association?

Answer: Yes, provided the applicant also satisfies the financial ability to pay qualifications of the Workers' Compensation Act.

(2) May the Houlton Water District be approved for participation in the workers' compensation group self-insurance plan of the Maine Municipal Association notwithstanding the non-participation in that plan by the Town of Houlton?

Answer: Yes, provided the applicant also satisfies the financial ability to pay qualifications of the Workers' Compensation Act.

Analysis: The one factor which distinguishes the two questions is the non-participation by one of the parent municipalities in the group self-insurance plan in which the water district seeks inclusion. This analysis suggests that parent municipality participation is not a condition precedent to water district eligibility. The status of the parent municipality is relevant only to the extent that it reflects the ultimate financial ability to pay of the applicant.

The statutory language which controls group self-insurance programs is 39 M.R.S.A. §23 (1978). The eligibility determination factors for inclusion within a particular self-insurance group are: (1) does the applicant have common business objectives or perform the same type of work as the group, 39 M.R.S.A. §23, Sub-§§2-A and 4, and (2) what financial impact will the applicant under consideration have on the proposed or existing self-insurance group, 39 M.R.S.A. §23, Sub-§§ 4 and 5.

An applicant for inclusion in a workers' compensation self-insurance group must satisfy the threshold standards set forth in two statutory provisions. Section 23, Sub-§2-A requires that:

Group self-insurers shall be those individuals or corporations associated together having similar business objectives, similar types of employment or employees engaged in the same type of work.

Section 23, Sub-§4, 1A defines "employers" for purposes of group self-insurance as:

- (1) Employers with related activity in a given industry employing persons who perform work in connection with the given industry;
- (2) An incorporated or unincorporated association or associations consisting exclusively of such employers provided they employ persons who perform such related work in a given industry;
- (3) A combination of employers in subparagraph (1) and an association or associations of employers as described in subparagraph (2).

Maine cities and towns comprise the majority of Maine Municipal Association membership. Quasi-municipal public corporations which perform functions traditionally municipal in nature are admitted as associate members. The Augusta and Houlton Water Districts provide a service which is ordinarily categorized as a municipal business objective. See 3A ANTIEU, INDEPENDENT LOCAL GOVERNMENT ENTITIES §30J.00 (1979). Both water districts are single-purpose public corporations which provide a limited service to the usual recipients of municipal sewer and water service. Their business objective is not similar but rather identical with the business objectives and types of employment requirements found at 39 M.R.S.A. §23, Sub-§2-A. They therefore satisfy the common business objectives and similar type of employment requirements found at 39 M.R.S.A. §23, Sub-§2-A.

Participation by the applicant water districts in the Maine Municipal Association's Workers' Compensation self-insurance group also satisfies the second statutory standard, found at 39 M.R.S.A. §23, Sub-§4, ¶4, Sub-¶(3). Both districts employ persons directly providing services as quasi-municipal sub-entities. The Maine Municipal Association is an incorporated association which, for Workers' Compensation insurance purposes, consists exclusively of such employers. These are the two elements required to meet the statutory definition of "employers" for purposes of group self-insurance.

The final and more critical factor in determining eligibility for inclusion in a particular self-insurance group is the applicant's proof of financial ability to pay its potential liability. The leading workers' compensation treatise, 4 LARSON, THE LAW OF WORKMEN'S COMPENSATION §92.10 (1978) emphasizes that group self-insurance programs have been most seriously criticized

. . . on the ground that the current solvency of a moderate-sized business is no guarantee that it can be depended upon to pay long-term compensation obligations or survive disastrous accidents and business depressions.

Section 23 of Title 39 was amended to add a new subsection 2-A by Public Laws 1973, Chapter 559, §2 (L.D. 1779). The legislative history demonstrates that financial ability, not the similarity in business objectives, is the primary concern of Workers' Compensation group self-insurance evaluation. The sponsor of L.D. 1779 underscored this concern in legislative debate, Legislative Record, pp. 4289-4290 (June 14, 1973).

MR. SMITH: Mr. Speaker and Ladies and Gentlemen of the House: The major concern that I had with this piece of legislation was that the groups that could be formed under the law if this bill passed, we were very concerned that these groups would be financially sound, so that if an employee were hurt, the payments could be made out of the group fund. The chairman of the Labor Committee, Mr. Brown and myself have been meeting with the Industrial Accident Commission and the Insurance Commissioner to make sure that there are enough teeth in this bill so that he can determine in advance if such a group, if it proposes, that it be allowed to provide workmen's compensation under the law so that those two officers of the state have enough authority to make sure that those groups are financially sound

Section 23 provides guidelines both to potential applicants and to the approval authority as to which employers can reasonably expect to be added to an existing group and as to the formation of a new group. The similarity of business objectives factors was added to group together with employers with similar risk and cost factors to promote sound administration and uniformity in losses paid.

Therefore, it would be reasonable for you to consider the Augusta Water District and the Houlton Water District as proper applicants for inclusion in the Maine Municipal Association group insofar as similarity of business objectives and type of work performed are concerned. The Chairman of the Workers' Compensation Commission must examine the financial data submitted by each applicant to determine whether or not that applicant has sufficient resources to meet the predicted liability of his potential group. Whether applicant provides adequate proof of financial ability to pay can only be determined by you based upon the financial information provided in each case.

Very truly yours,

CHARLES D. DEVOE
Assistant Attorney General

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