

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of  
the Maine Attorney General as transferred to  
the Maine State Law and Legislative Reference  
Library on January 19, 2022**

RICHARD S. COHEN  
ATTORNEY GENERAL



STEPHEN L. DIAMOND  
JOHN S. GLEASON  
JOHN M. R. PATERSON  
ROBERT J. STOLT  
DEPUTY ATTORNEYS GENERAL

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

February 19, 1980

Honorable William B. Blodgett  
House of Representatives  
State House  
Augusta, Maine 04333

Dear Representative Blodgett:

This will respond to the questions posed by you regarding  
5 M.R.S.A. § 1742, sub-§ 6-A, and sub-§ 7.

You have asked:

(1) Whether or not the Bureau of Public Improvements has  
the authority to waive any requirements specified in the Code  
they or administrative units adopt?

(2) Whether or not the Bureau of Public Improvements can  
approve plans or specifications which do not meet the require-  
ments of § 1742, sub-§ 6-A, or any other statutory or regulatory  
requirements?

(3) What is the responsibility of the Bureau of Public  
Improvements to insure that plans and specifications submitted  
for approval do in fact comply with State requirements?

Section 1742, sub-§ 6-A

This section was enacted by the 106th Legislature as an  
alternative to a proposal calling for a Maine Building Code  
Council. The recommendations for a Maine Building Code  
Council came out of the Management and Cost Survey. The  
Code Council recommendation would have appropriated \$50,000  
and established a Council to develop a uniform building code  
for the State of Maine. In the alternative, the 106th Legis-  
lature enacted Chapter 741, P.L. 1973, which now appears in

the statutes as 5 M.R.S.A. § 1742(6-A). Section 1742(6-A) gives the Bureau of Public Improvements authority:

"To adopt for design purposes for public improvements one of the following published compilations of rules which has been prepared by the American Insurance Association, the Building Officials and Code Administrators International, the International Conference of Building Officials, the National Fire Protection Association or the Southern Building Code Congress, except that where an administrative unit has adopted one of the above codes, such code shall be used for the design of a school building in that administrative unit. . . ."

Having adopted a Code, the Bureau of Public Improvements is responsible for enforcing substantial compliance with the provisions of the Code adopted. (See 5 M.R.S.A. Chapter 153 and Article I BOCA Basic Building Code). The Bureau may not waive the Code or its provisions. However, the Bureau may make minor or major changes or modifications in the Code provisions to meet the particular needs of the State. Those modifications may be made so long as they are made in accordance with the provisions of the Code governing modifications (minor) or the Maine Administrative Procedure Act (major modifications). For example, the BOCA Code provides:

"109.2. Modifications:

When there are practical difficulties involved in carrying out structural or mechanical provisions of this Code or of an approved rule, the building official may vary or modify such provision upon application of the owner or his representative, provided that the spirit and intent of the law shall be observed and public welfare and safety insured."

In addition to modifications made pursuant to the Code, the Bureau may alter Code provisions by its own rulemaking authority in accordance with the Maine Administrative Procedure Act. Changes made in this manner would have the effect of repealing and replacing Code provisions, rather than granting variances for a particular declared purpose on a specific job.

Finally, the Bureau must interpret the Code in relation to its own statutes, rules and regulations. The Code is designed to be a performance document rather than a series of rigid specifications. The Code provides for the necessary melding of Code provisions and the local statutory or regulatory requirements. The Bureau of Public Improvements, administrator of the Code in Maine State Government, is responsible for its interpretation with respect to the design of State of Maine public improvements.

Section 1742, sub-§ 7.

Section 1742(7) gives the Bureau authority:

"To approve all proposals, plans, specifications and contracts for public improvements which the State of Maine or any of its agencies hold in fee or by leasehold interest and for school administrative unit projects costing in excess of \$25,000. . . ."

The Bureau's approval power pursuant to this section and other pertinent sections of Chapters 141 to 155 of Title 5 does not enable the Bureau to approve plans and specifications which do not meet the requirements of the Building Codes, Chapters 141 to 155, Bureau Regulations or the contractual agreements for the plans and specifications submitted for approval.

The Bureau's responsibility for approval is to approve only those plans or specifications submitted which substantially comply with the law, regulations, contracts and provisions of the Building Codes. The Bureau's approval is not assurance or guarantee that the plans and specifications precisely comply. The professionals (e.g., architects, engineers, general and subcontractors) are the guarantors of compliance. They are the parties upon whom the Code and Maine law place ultimate responsibility for compliance. The Bureau's approval role is to determine satisfactory proof of performance so that the job may proceed. While the Bureau does not act as guarantor, it does have the authority and ability to enforce violations of the Code and its laws and regulations through stop work orders, revocation of its approval, and other devices which revoke the license of the building professionals to proceed with the work. (See, for example, Article I, the BOCA Basic Building Code, and 5 M.R.S.A. Chapter 153).

The authority to approve plans and specifications gives the State an opportunity to utilize experts to evaluate the proposals. In practice, the Bureau studies each plan to determine if it fulfills the desired objectives. It suggests changes that it believes will prevent cost overruns. It utilizes its unique position as overseer of all State construction projects to benefit agencies and school districts that may have limited experience in this area. It suggests changes that it believes will save money and avoid inefficiency. On occasion Bureau employees discover structural design problems while carrying out their duty to provide budgetary analysis. Such structural design problems are not and should not be ignored. However, the existence of these occasional encounters does not create a duty to add structural analysis to the duties already encumbered upon the Bureau.

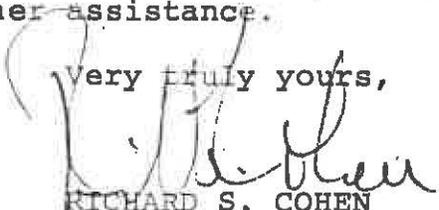
In order to approve the structural, mechanical and other engineering design aspects of a given plan or design the Bureau would have to analyze the structural calculations upon which the plan or design is based. The calculation of the structural load requirements and determination of need for specific structural materials and framing to carry such loads would necessarily involve an immense expenditure of time. Construing the mandate to approve plans and specifications to include approval of structural, mechanical and engineering design would be tantamount to requiring the Bureau to reproduce the primary effort of the architect obtained to produce the plans. The legislation in question does not specifically require the Bureau to include structural, mechanical or engineering design analysis in its approval and it would not appear reasonable to construe it to do so.

The Bureau's approval of plans and specifications has been geared to budgetary analysis since section 1742(7) came into effect in 1957. This practice is logical when one considers the approval as originally preparatory to the submission of plans to the Governor and Council; it is likely that the Executive approval was intended as an aspect of gubernatorial budget control. When the Bureau's authority to approve was expanded from those projects requiring gubernatorial approval to all public improvements in 1967 and then to include school projects in 1971, it continued to render such approval on the basis of a determination of the proper relationship between the funds available and the program requirements of the desired facility.

In addition to responding to the Legislature's budgetary concerns in the approval process, the Bureau also responds to the legislative and code concern for the public safety, health and welfare insofar as they are affected by building construction.

I hope this information is helpful. Please feel free to call on me if I can be of any further assistance.

Very truly yours,



RICHARD S. COHEN  
Attorney General

RSC/ec

cc: Richard G. Bachelder, Director  
Bureau of Public Improvements