

MAINE STATE LEGISLATURE

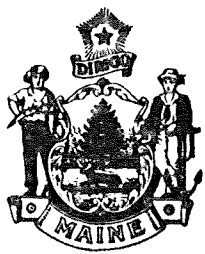
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JAMES E. TIERNEY
ATTORNEY GENERAL



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

January 29, 1982

Honorable Richard S. Davies
House of Representatives
State House
Augusta, ME 04333

Dear Representative Davies:

You have requested an opinion on the general question of the applicability of P.L. 1981, c. 447, which enacted 35 M.R.S.A. §§3221-26, to water districts formed both before and after January 1, 1982. Your specific questions can be stated as follows:

1. Do subsections 4 and 5 of § 3223 now apply to all water districts regardless of the date when they were established?
2. Do the other sections of Chapter 447 apply to water districts formed before January 1, 1982, or do their charters control?
3. If charters govern pre-1982 districts, what provisions apply where the charter is silent?

All three of these questions can be answered by referring to 35 M.R.S.A. § 3226 which reads as follows:

The provisions of this chapter shall govern all water districts formed on or after January 1, 1982. For any water districts formed before that date, any provision in the governing private and special law, that is, the charter, which is not in compliance with this chapter may remain in force, except that section 3223, subsections 4 and 5, shall apply to those districts on January 1, 1982, and any contrary portion of the water district charter shall be considered repealed on that date.

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This section sets out the general rules governing the applicability of Chapter 447. All of the provisions of that chapter apply to water districts formed after January 1, 1982. For pre-1982 districts, however, more limited application was intended. While the section is not a model of clarity in regard to these districts, general rules applicable to them can be discerned from the language and the apparent general intent.

It is quite clear that the Legislature intended that subsections 4 and 5 of § 3223 were to apply to pre-1982 districts notwithstanding any contrary language in their charters. Thus, the answer to your first question is in the affirmative: subsections 4 and 5 of § 3223 apply to all water districts regardless of the date they were established.

In answer to your second and third questions on the applicability of the remaining provisions of Chapter 447 to pre-1982 water districts, we conclude that, where a provision of a charter is inconsistent with these provisions, the charter controls and that, where the charter is silent, the statute controls. We reach these conclusions on the basis of the language of the statute and what we perceive as the general intent that the legislation have broad application to all water districts.

We hope these answers address your concerns. If you have any further questions or problems, please feel free to contact us.

Sincerely,

Stephen L. Diamond

STEPHEN L. DIAMOND
Deputy Attorney General

SLD:jwp