

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

July 23, 1987

Honorable John L. Martin
Speaker, House of Representatives
State House Station #2
Augusta, Maine 04333

Dear Speaker Martin:

You have asked whether the Regional Planning Commissions of the State are subject to the provisions of the Maine Freedom of Access Law, 1 M.R.S.A. § 401, et seq., so as to render their records open to public inspection and their meetings open to public attendance. For the reasons which follow, it is the Opinion of the Department that the Commissions are subject to the Freedom of Access Law.

Section 402(2) of the Freedom of Access Law specifies the entities of government whose proceedings are to be held in public and whose records, pursuant to Section 402(3), are to be open to public inspection. Included among the list of entities covered by the statute are:

Any board, commission, agency or authority
of any county, municipality, school district
or any regional or other political or
administrative subdivision.

Since a Regional Planning Commission is a "commission" within the meaning of this provision, and since it is not a subunit of a "county, municipality, [or] school district," the question which you pose resolves into whether it is "regional . . . political or administrative subdivision."

The legislative history of this provision makes it clear that the Legislature intended that it apply to Regional Planning Commissions. Prior to 1987, the statute contained no reference to "regional" subdivisions. The word "regional" was added to the subsection during the past session of the

Legislature. P.L. 1987, ch. 477, § 1. The legislative history of this amendment is quite explicit that the Legislature intended to make it clear that Regional Planning Commissions be subject to the Freedom of Access Law. The Statement of Fact of the original Legislative Document, which resulted in Chapter 477, states:

Section 1 of this bill [amending 1 M.R.S.A. § 402(2)(C)] resolves a latent ambiguity over whether such organizations as regional planning organizations and other separately incorporated institutions of local government are subject to the freedom of access law. If the governing institutions of municipalities and counties are subject to the freedom of access law, it is hard to see why an institution performing governmental functions in which there is substantial citizen interest, such as planning, should be exempt simply because it includes more than one local government or is organized as a legal entity separate from the governments it serves. Legislative Document No. 1161, Statement of Fact.

The means by which L.D. 1161 sought to accomplish this objective was to add the words "or administrative subdivisions whether or not separately incorporated" to Section 402(2)(C). In a new draft of L.D. 1161, the Joint Standing Committee on the Judiciary struck these words and added the words "regional or" to the paragraph as indicated above. Legislative Document No. 1849, § 1. The Statement of Fact of this Legislative Document provides:

This new draft includes boards, commissions, agencies and authorities of regional, political or administrative subdivisions in the definition of "public proceedings." Legislative Document No. 1849, Statement of Fact.

It is thus clear that, whatever the status of a Regional Planning Commission with regard to the Freedom of Access Law prior to the enactment of Chapter 477, such Commissions will be subject to the provisions of the Law upon the effectiveness of that Chapter ninety days after the adjournment of the First Regular Session of the 113th Legislature.

Beyond this, it also appears to this Department that even prior to the enactment of Chapter 477, a Regional Planning

Commission should have been considered subject to the Freedom of Access Law. In determining whether a particular governmental agency is covered by the Freedom of Access Law, our Office has traditionally asked a series of questions: Whether the entity is created by statute, whether the entity's existence is not limited in time, whether the entity's members are chosen pursuant to statute, whether the entity receives public funds, whether the members of the entity are compensated beyond their expenses, and whether the entity exercises governmental, rather than advisory, power. The more that these questions are answered in the affirmative, the more likely that the agency will be deemed to be subject to the Freedom of Access Law. Op.Me.Att'y Gen. 85-19 at 2-3.

Applying these questions to the Regional Planning Commissions, it is clear that they are created by statute, that there is no time limit imposed upon their existence, that their members are selected according to statute, and that they are funded entirely by public funds. See the Regional Planning Commission Act, 30 M.R.S.A. § 4501, et seq. This Department is not aware of whether members of a particular Commission receive compensation above their expenses, but it may be assumed for purposes of this Opinion that they do not. Finally, with regard to the purposes of a Commission, Section 4511 of the Regional Planning Commission Act provides:

The purpose of a regional planning commission shall be to promote cooperative efforts toward regional development, prepare and maintain a comprehensive plan, coordinate with state and regional planning and development programs and to provide planning assistance and advisory services to municipalities.

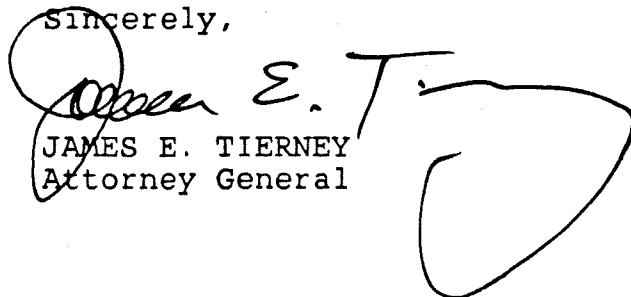
The functions of a Commission, therefore, are twofold: planning and advisory. See Op.Me.Att'y Gen. 85-2 at 3.

Weighing these factors, and bearing in mind that in enacting the Freedom of Access Law the Legislature provided that the law "shall be liberally construed and applied to promote its underlying purposes and policies [of open government]," it is the Opinion of this Department that the Regional Planning Commissions of the State should be considered "political or administrative subdivisions" within the meaning of that Law even prior to its 1987 amendment. They are permanent entities created by statute funded entirely by public money who discharge planning functions. The fact that these planning activities may not be binding on their constituent municipalities would not transform them into purely "advisory"

bodies sufficiently to take them out of the operation of the Freedom of Access Law. Accordingly, the meetings of the Commissions are now open to the public, and their records open to public inspection, subject, of course, to the exceptions from those two requirements contained in Section 405 and Section 402(3), respectively.

I hope the foregoing answers your question. Please feel free to reinquire if further clarification is necessary.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Tierney". The signature is written in a cursive style with a large, sweeping flourish at the end.

JAMES E. TIERNEY
Attorney General

JET/ec