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On Regional Agencies and Councils of Government

a report to
The Joint Standing Committee on
Local and County Government

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1985



STATE OF MAINE
EXECUTIVE DEPARTMENT
STATE PLANNING OFFICE

JOSEPH E. BRENNAN
GOVERNOR

RICHARD E. BARRINGER
DIRECTOR

January 31, 1985

The Honorable John L. Tuttle, Jr., Senate Chairman
The Honorable Edward A. McHenry, House Chairman
Joint Standing Committee on Local and County Government
Room 124 State Office Building
Augusta, ME 04333

Dear Senator Tuttle and Representative McHenry:

In January of 1984, your Committee asked this Office to examine and recommend appropriate policy guidelines for the operation of Maine's regional planning agencies and councils of government. (A copy of your letter is attached.)

In response, I established an Advisory Committee to this Office that was ably chaired by Representative John P. Daggett and included Stephen Gove (Maine Municipal Association), Alex Pattakos (Bureau of Public Administration, UMO), Robert Hunter (Hunter-Ballew Associates), and John Walker (Greater Portland Council of Governments). The Committee met five times, and in September issued a report "A Model for State-Regional Cooperation in Maine". (A copy of the report is attached.)

This report generated lively and fruitful debate among regional planning and council directors, design profession representatives, and municipal officials. In December, Kay Rand of the Maine Municipal Association proposed draft legislation to address the issues raised in the Advisory Committee report. This legislation was approved by the MMA's Legislative Policy Committee on Tuesday, December 11. (A copy of the legislation is attached.)

I endorse the MMA draft as a generally workable and constructive approach. It does not resolve every question your Committee raised, but it does provide a mechanism--namely, State Planning Office rulemaking authority--that is flexible and adaptable enough to address them effectively.

Following are my responses to the six specific questions in your January, 1984, letter:

1. What services should regional agencies provide? Their enabling statute allows regional planning commissions to provide planning assistance and advisory services, and councils of government to provide any service that may be provided by local governments. The recent Attorney General's opinion addressed to Rep. John Daggett states clearly that regional planning commissions are limited to only planning and advisory services

and cannot form subsidiaries to provide other services. (A copy of the opinion is attached.)

The Advisory Committee, the MMA, and I agree that the services provided to municipalities by regional agencies need no further restrictions.

2. To whom should these services be provided? The Attorney General has answered this question in his opinion, stating that their enabling legislation "clearly contemplates that Regional Planning Commissions will provide services only to their members, and that such services will be supported by contributions from the members, or by grants or gifts."

The enabling statute for Councils of Government was not reviewed by the Attorney General. The Council of Government statute states that they may "exercise any power, privilege, or authority capable of exercise by a member municipality, except essential legislative powers, taxing authority or eminent domain power." We conclude from this that the same restrictions apply to Councils of Governments as to municipalities in the matter of, to whom they may provide services.

3. What safeguards should be provided to prevent undue influence and pressure on municipalities seeking grants to utilize the services of the regional planning agency awarding those grants? The Advisory Committee recommended that representatives of the regional agencies and design professions work together to develop workable guidelines addressing this issue. The parties have agreed to work toward this goal, and have met twice. Their efforts should be encouraged, and I do not recommend legislative or rulemaking action at this time.
4. What guidelines should be provided concerning the use of in-house design services when the same agency must review and approve or disapprove the designs? Again, the design professions and regional agencies are working together to develop guidelines addressing this issue. I recommend no legislative or rulemaking action at this time.
5. Should some State agency monitor the regional agencies for compliance with the statutes and with other policy guidelines developed? I agree with the MMA recommendation that, if new policy guidelines or rules are developed, the State Planning Office should monitor regional agencies for compliance.
6. What should be the appropriate level of support for regional planning? I support the Advisory Committee's and the MMA's recommendation for increased State support of regional agencies and councils of government. I recommend a total appropriation of \$300,000 annually, with a 25% local match. This would best be a direct grant in support of local implementation of State-imposed laws or programs, examples of which are shoreland zoning, community development, and solid waste management.

The Honorable John L. Tuttle, Jr., Senate Chairman
The Honorable Edward A. McHenry, House Chairman
January 31, 1985
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The regional planning agencies and councils of government have annually received about \$100,000 in State funds since the late 1960's to support these activities. Clearly, State funds have not kept pace with inflation or the added requirements placed by the State on local governments during this period. The proposed increase will allow each regional agency and council to support approximately one staff member to address these issues of State concern and significance.

I recommend that this additional funding be available only to those agencies whose governing boards are comprised of at least 51% local elected officials. This requirement, consistent with the Advisory Committee's recommendations, will help ensure that regional agency and council initiatives supported with State funds enjoy local legitimacy.

The members of the Advisory Committee, my staff, and I are grateful for the opportunity to have been of service to you in this timely and important matter. I wish to make special note of the valuable assistance provided us by each member of the Advisory Committee, by John DelVecchio of this Office, and by Kay Rand of the Maine Municipal Association. I am deeply grateful to them all.

If we may be of further assistance, we shall be happy to oblige.

Sincerely,


Richard E. Barringer

REB/ns

Enclosures

cc: Governor Joseph E. Brennan
Members, Committee on Local & County Government
Members, State Planning Office Advisory Committee
Chairman, Maine Association of Regional Councils

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SENATE

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STATE OF MAINE

ONE HUNDRED AND ELEVENTH LEGISLATURE

LOCAL AND COUNTY GOVERNMENT

Richard E. Barringer, Director
State Planning Office
State House Station # 38
Augusta, Maine 04333

Dear Mr. Barringer:

The Joint Standing Committee on Local and County Government has been studying the organization and authority of Regional Planning Commissions and Councils of Governments. That study has focused on what types of services a regional planning agency should provide and to whom these services should be provided as well as how much oversight currently exists concerning the role of regional planning agencies.

As a result of that study, the Committee believes that there has been some conflict, both perceived and real, between the functions of a regional planning agency and private sector consultants in the engineering, surveying, and architectural fields. For a variety of reasons, some regional agencies appear to be looking for revenue sources in non-traditional planning agency arenas. Although this type of activity is not widespread, the Committee has expressed some concern that regional planning agencies will increase their consultational services in the engineering, surveying, and architectural fields. There does not appear to be any clear statutory guidelines or policies on how far regional planning agencies should enter the area of providing engineering, surveying, and architectural consulting services and to whom these services should be available.

During the course of the study representatives of the regional planning agencies and the consulting engineers and surveyors began a dialogue to explore non-legislative means to resolve the differences these two groups have concerning each group's functions. The Committee desires to encourage this non-legislative solution and to further clarify the role of the regional planning agencies. The Committee has recommended the creation and implementation of written guidelines for the operation of a regional planning agency.

The Committee feels that your agency's experience and expertise in dealing with regional planning agencies places it in a unique position in State Government to evaluate the needs which a regional planning agency can meet and develop the proper guidelines for those agencies operations.

Accordingly, the Committee requests that you undertake a study to establish and implement policy guidelines for regional planning agencies. The Committee suggests that the guidelines should include policies concerning:

1. What services a regional planning agency should provide?
2. To whom should these services be provided?
3. What safeguards should be provided to prevent undue influence and pressure on member municipalities seeking grants to utilize the services of the regional planning agency awarding those grants?
4. What guidelines should be provided concerning the use of in-house designing services when the same agency must review and approve or disapprove the designs?
5. Should some state agency monitor the regional agencies for compliance with the statutes and with any policy guidelines developed?
6. What should be the appropriate level of State General Fund support for regional planning?

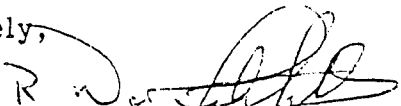
Should you agree to coordinate this effort, the Committee encourages you to seek the participation of other interested parties to include, but not to be limited to, members of the following groups:


1. The Joint Standing Committee on Local and County Government,
2. Maine Association of Regional Councils,
3. Consulting Engineers of Maine, and
4. Maine Municipal Association.

Should you seek to include a member of our Committee, we will be pleased to make that appointment.

We have enclosed a copy of the full report of our Committee and encourage you to initiate the requested study. We feel it will enhance the ability of regional planning agencies to carry out their functions effectively. We look forward to your response to this request.

Sincerely,


Senator R. Donald Twitchell


Representative Edward A. McHenry

A MODEL FOR STATE-REGIONAL
COOPERATION IN MAINE

September 1984

State Planning Office
Advisory Committee on Regional Councils
Chairman: Honorable John P. Daggett
Members: John E. Walker, Greater Portland COG
Alex N. Pattakos, Bureau of Public Administration
Stephen W. Gove, Maine Municipal Association
Robert E. Hunter, Hunter-Ballew Associates

EXECUTIVE SUMMARY

The State Planning Office Advisory Committee on Regional Councils was created in response to a request by the Joint Standing Committee on Local and County Government to provide recommendations on the following:

- 1) administrative guidelines for regional councils
- 2) State funding level for regional councils
- 3) State monitoring level for regional councils.

The Committee found that a high level of cooperation and understanding between State and local governments in Maine is necessary to achieve common public goals. Maine has 493 organized cities and towns --- most too small to have professional staff --- and distinct regions with widely varying economies and problems. The Committee determined that pursuing necessary coordination through Regional Councils has considerable merit. What problems currently exist with some Regional Councils can be addressed through implementing the Committee's recommendations.

The Committee recommends that the Local and County Government Committee draft an omnibus bill which would:

1. re-define regional councils as Councils of Government, require adherence to accounting guidelines, and prohibit conflict of interest and for profit activities by regional councils;

2. establish lead State agency responsibility for Regional Councils and fund one staff person for this purpose in the Office of Intergovernmental Affairs;
3. establish responsibilities for developing and implementing regional investment plans by Regional Councils;
4. establish State funding and guidelines for local technical assistance to be provided by Regional Councils;
5. adopt standardized formats and administrative procedures to eliminate unnecessary costs in administering State/Regional Council contracts.

Of the five recommendations, three have no direct cost attached, and two (#2 and #4) would require increases in General Fund appropriations of \$236,000 in 1985 and \$136,000 in 1986.

A. STATE-LOCAL INTERRELATIONSHIPS IN MAINE

Local governments are created and enabled through Maine State law. However, because of the size of the State, the dispersed population, and longstanding New England tradition, local governments have a strong role in Maine public affairs. In many important areas of governance --- environment, transportation, development, human services --- the State of Maine shares responsibilities with local governments for delivering services. There are numerous State laws and regulations which must be administered by, or which regulate, local government. These shared roles are structured in a variety of ways. To name a few:

- 1) State financial assistance to local government -
through education aid, revenue sharing, and General Assistance support
- 2) State administration of federal pass-through funds to local government - in transportation, community development, sewer construction
- 3) State mandated local enforcement of State laws -
in shoreland zoning, subdivision, site location, and general law enforcement
- 4) State mandated local facilities maintenance -
in transportation, solid waste, education.

Overall, about 22% of the State's total annual expenditure, \$300 million, is passed through to local governments.

B. PROBLEMS IN STATE-LOCAL COOPERATION

With a relationship so complex and intertwined, a high level of cooperation and understanding between the State and local governments in Maine is necessary to achieve common public goals.

This is not easy. There are 494 organized cities and towns in a State of a little over a million people. The average size of a city or town in Maine is 1,000 people.

Most towns in Maine are too small to have professional staff; too small to have economies of scale to deliver services on a cost-effective basis; and are too far from Augusta to maintain regular contact.

All cities and towns in Maine are in economic regions which encompass neighboring communities. As a result, many key developments which affect the quality of life in a given community may occur outside of its municipal boundaries --- e.g., a mill closing in one town affects welfare costs in the town next door.

The regions in Maine vary widely in their economies and problems. Northern Maine is struggling with declining agriculture and population; east coastal Maine has experienced years of economic problems; southern coastal Maine has a tourist boom; southern Maine is growing rapidly, and in western Maine traditional industries such as lumbering and manufacturing have declined.

To achieve its goals in this situation, State government must find ways to:

- 1) maintain open communication with local governments;

- 2) encourage local governments to join together to achieve economies of scale and enhance professional staff capabilities; and
- 3) develop State programs which are sensitive to the varying needs of each of the State's regions.

The State has a compelling interest in promoting economic and social health of all communities and in encouraging State/local coordination towards this end. A vehicle that has considerable merit is pursuing coordination through regional councils.

C. THE ROLE OF REGIONAL COUNCILS IN MAINE

Regional councils are voluntary associations of local governments within State-designated boundaries in Maine. They can be a vehicle for the State government to communicate quickly and effectively with local governments; to encourage professionalism and cost-effective service delivery to local governments; and to develop regional policies relating to unique needs around the State.

The usefulness of regional councils can be demonstrated by a variety of examples:

- o the Department of Transportation uses regional councils to help establish priorities for State transportation aid
- o the Department of Environmental Protection uses regional councils to encourage cost-effective regional solutions to solid waste problems

- o the State Planning Office uses regional councils to assist local governments to meet State goals in community development, and environmental regulation.

Regional councils also provide concrete benefits to municipalities, which indirectly help the State to meet its goals. Examples:

- o Greater Portland Council of Governments saved \$200,000 for area local governments through its joint purchasing program in 1983
- o NMRPC has brought \$5 million in economic development grants into Aroostook County during 1980-83.

In recognition of these facts, Governor Brennan recently issued an Executive Order (6FY 83/84, November 15, 1983) calling for further cooperation and enhancement of regional council efforts by State agencies.

The Committee believes that regional councils can serve as a vital link between local and State government, effecting better coordination and understanding about local needs and state programs.

D. STATE-REGIONAL PROBLEMS

Although there are examples of successes in State-regional cooperation which can be cited, by and large the potential for such partnerships is not being fully realized. A recent draft study completed for the State Planning

Office, An Evaluation of the Local Technical Assistance Programs of Regional Planning Agencies (Portland Research and Communications, 1984) identified the following problems:

- lack of coverage of the entire State by regional councils --- the Bath-Brunswick area's council has closed in recent years (p. 75);
- the wide range of skills and interests of regional councils around the State; some are strong, some weak; some excel in land use, some in economic development, etc. (p. 65);
- lack of consistent State performance and administrative standards for regional contracts, and lack of effective monitoring (p. 58);
- a recent decline (with the loss of federal funds) of actual regional comprehensive planning conducted by regional councils (p. 9);
- lack of general understanding of the legal roles of regional planning commissions and councils of governments (p. 63);
- State-regional conflicts on policy issues (p. 64); and
- Lack of communication (p. 65).

The Committee feels that these problems are manageable, and that by implementing the following recommendations most of the problems can be effectively addressed.

E. RECOMMENDATIONS

In order to address the above problems, and enhance State-local cooperation through better use of regional councils, the following is recommended:

1. Clarification of State enabling law

The current law allows two types of regional councils; does not assure that councils reflect the will of elected officials; does not contain adequate financial standards; and contains program review language which has never been implemented.

The Governor's recent Executive Order endorses the Council of Governments concept. Organizationally, the Council of Governments assures that local officials are represented. There is a clear scope of eligible services a Council of Governments can provide -- all the activities which local governments can provide. In this recommendation, we suggest that all regional planning organizations become Council of Governments, and that the Council of Governments legislation be tightened and clarified.

The law should be tightened and clarified by:

- a) incorporating the Regional Planning Commission (RPC) statute (Title 30, Sections 1301, 4511-4517, and 4521-4523) into the Council of Governments (COG) Statute (Title 30, Sections 1981-1986). This would facilitate the transition wherein RPC's become COG's, a more representative form of organization.
- b) allowing a transition period of 2 years from the date legislation is passed for RPC's to change to COG's.
- c) establishing a condition for the receipt of State funds:

- a. an audit requirement, as local governments have, equivalent to the standards set in OMB Circular A-102 Attachment P.
- b. an indirect cost plan requirement equivalent to the standards set in OMB Circular A-87, if indirect costs are charged.
- d) including a provision to prevent the opportunity or semblance of conflict of interest by prohibiting a Regional Council from providing a municipality any service for fee where the project's funding was dependent on Council review (The wording for this section will be drafted by representatives from the Maine Association of Regional Councils and the Consulting Engineers of Maine and will be presented to the Committee by November 1, 1984).
- e) including a provision which expressly prohibits a Council of Governments from creating a for-profit subsidiary or a non-profit subsidiary designed to circumvent the intent of the law.
- f) including a provision limiting services provided for a fee to local governments within the region's designated service boundary, or to member governments. Services can include all public services that are available to municipal governments such as publications, books and data services. This provision would not limit the ability of COG's to accept grants for public purposes from any source, public or private.

COST: \$-0-

2. Create a State incentive program for regional planning

A lack of current regional growth plans creates a vacuum for State and local governments in making public investments for the future. Such plans were funded in the past by federal grants. However, a weakness of these plans is that they did not directly affect investments in the region. Without this kind of a pay-off, there was no incentive for local officials to take such plans seriously, or to make politically difficult decisions on priorities. However, in some cases, regional plans have been tied into investment decisions. These have been more successful. For example, regional plans and investment strategies for highways and solid waste have been particularly useful in the past; this model could be applied to other State programs for infrastructure, housing, community development, economic development, disaster planning, and environmental protection.

What is needed is a process through which:

- a) the State identifies State assistance programs for which regional investment guidelines are useful.
- b) the State prepares performance standards which regional investment plans must meet in order to be used.
- c) Regional Councils, on a voluntary basis, prepare and submit such plans (The plans should identify possible joint ventures of local and State government).

- d) State approved regional plans are used as a bonus factor in making State grant awards.

The State could act through a State interagency board established by the Governor.

COST: \$-0-

3. Local technical assistance program

For State laws which need local action to enforce or implement, or for State programs which local governments may participate in, there is a need for local technical assistance. State laws include the shoreland zoning, subdivision, and manufactured housing laws, and solid waste requirements. State programs include community development block grants, the HOME program, DEP sewage treatment grants, parks and recreation grants, flood insurance, disaster planning, and economic development programs. The needed local technical assistance can be effectively provided by regional councils. Currently, regional councils have contracts with State agencies to provide such help, but the contracts are small and fragmented, monitoring is uneven, and the results not always satisfactory.

The State's annual contribution supporting regional council technical assistance has remained constant at about \$94,000 for the

past 5 years. This amount is inadequate to cover existing regional council local technical assistance expenses. State support of the equivalent of one full time staff position in each region is the minimum needed to insure that basic technical assistance needs are met in each region. The State should increase its financial support, in conjunction with local support, to adequately cover regional technical assistance capacity for implementing state laws and initiatives. At the end of two years, the Office of Intergovernmental Affairs, with assistance from the State Planning Office, should provide a report to the Local and County Government Committee reviewing the adequacy of the technical assistance provided and the funding level, and containing recommendations for the program's future. A coordinated State approach to technical assistance through regions could result in better products, less paperwork, and more coverage. Such a program would involve:

- a) A State interagency board defining technical assistance tasks.
- b) Allocating funds to each region to support technical assistance. Each region assigns one staff person to coordinate the technical assistance and serve as the single point of contact with the State.
- c) Clearly defining Technical Assistance work in the State/regional council contract (e.g., shoreland zoning aid, solid waste, economic development, even regional plan preparation).

The actual contractual tasks may vary considerably from region to region, according to local needs, and gaps in regional services.

- d) A State staff person administering and monitoring the contracts in the Office of Intergovernmental Affairs, with State Planning Office assistance (see page 12).
- e) Rewarding good performance, and penalizing poor performance, through financial incentives.

This Program would be designed to supplement, not replace, existing State-regional contracts for specific programmatic aid (see Recommendation 5). It would particularly address State mandates and goals not covered by existing contracts.

The Committee believes that State funds building the capacity of Regional Councils to provide local technical assistance are both necessary and appropriate. State funding for this purpose should decrease once regional council capacity is improved and local financial support increases.

COST:	<u>State</u>	<u>Local</u>	<u>Total</u>
Year #1	\$300,000	\$100,000	\$400,000
Year #2	\$200,000	\$200,000	\$400,000

(Note: Currently \$94,000/year from the General Fund is provided to regions, so the net cost is \$206,000 in Year #1; \$106,000 in Year #2.)

4. Lead State agency for Regional Councils

In order to insure better coordination between State agencies and regional councils, better administration of state funds supporting Regional Council tasks, and adequate provision of local technical assistance for State initiatives, the State should support one staff position in the Office of Intergovernmental Affairs.

The Office of Intergovernmental Affairs was set up in 1983 as an outcome of the Blaine House Conference on State and Local Relations. The Conference's purpose was to "focus on far-reaching changes in our state and local relationships: in specific programs; in the allocation of responsibilities and resources; in the way that state, substate, and local governments are organized; and in the way such levels relate to one another". This task fits into the overall mission of this Office.

The staff position would administer contracts and Memorandums of Understanding between the State and Regional Councils, and coordinate the work being accomplished for State agencies.

The State Planning Office serves in a limited capacity as coordinator between the RPC's and the State; however it is neither legislatively mandated nor funded to do so. The SPO also has broad experience administering contracts with communities and with regional councils, as do several other line agencies, such as the

Departments of Conservation and Transportation. The SPO should assist the Office of Intergovernmental Affairs in discharging its responsibilities.

COST: \$30,000

5. Standardized State contract, administrative, audit requirements for State-regional contracts

For programmatic State contracts with Regional Councils for special efforts above and beyond the general technical assistance program (e.g., transportation planning, CDBG technical assistance), there would be standardized contracting procedures. This is intended to eliminate the considerable administrative costs created by multiple, small State contracts with different State agencies.

COST: \$-0-

These five recommendations, if implemented, could meet the State needs described in Section B. The Technical Assistance program would facilitate open communication. The changes in State law and contracting procedures would make regional councils more effective. The regional planning recommendation would help the State develop regionally sensitive programs.

Of the five recommendations, three have no direct cost attached, and two would require increases in General Fund appropriations of \$236,000 in 1985 and \$136,000 in 1986.

Implementation

An omnibus bill should be drafted by the Local & County Government Committee which would redefine regional councils, establish by law lead State agency responsibility for regional councils and fund one staff for this purpose; establish responsibilities for developing and implementing regional plans; and establish technical assistance funding and guidelines.



Maine Municipal Association

COMMUNITY DRIVE
AUGUSTA, MAINE 04330
(207) 623-8428

December 3, 1984

Richard E. Barringer, Director
State Planning Office
State House Station #38
Augusta, Maine 04333

Dear Dick:

On Friday, November 16 a meeting was arranged at the Maine Municipal Association between regional council executive directors, board chairmen and MMA staff to discuss the September 1984 report "A Model for State-Regional Cooperation in Maine." Denise Lord and John DelVecchio of your staff were also present.

The purpose of the meeting was to collectively discuss the recommendations contained in the report and to develop a consensus around a proposal for submittal to MMA's Legislative Policy Committee.

I have drafted a proposal which I believe reflects the conclusions of that meeting. Regional council people have just received a copy of the draft so any reactions they might have are still unknown.

The draft proposal basically incorporates the non-controversial aspects of the report and eliminates the items that seemed to be the focus of the criticism, i.e., requiring all regional councils to become councils of governments and exerting more state control over the types and degree of technical assistance provided to municipalities by regional councils.

The draft, a copy of which is enclosed, does the following:

1. Combines the two enabling statutes into one new chapter 204-A entitled "Regional Councils" (sections 4, 5 and 6);
2. Designates the State Planning Office as the lead agency to coordinate between the state and regional councils (proposed § 1991-B, sub-§ 1);
3. Gives the Director of the State Planning Office authority to adopt rules to create standardized contract, administrative and audit requirements for regional councils (proposed 1991-B, sub-§ 2); and,
4. Appropriates \$500,000 annually in additional dollars from the General Fund to support regional council tasks (section 8).

Richard E. Barringer, Director
Page 2
December 4, 1984

Sections 1, 2, 3 and 7 are technical changes to correct references made obsolete by the repeal of the existing enabling statutes.

MMA's Legislative Policy Committee will be discussing this proposal on December 6. The staff recommendation will be that MMA support the proposal. It is becoming more and more imperative that municipalities have access to quality technical assistance to build their capacity to enforce state and local land use laws, including new underground tank regulations and a potential mandatory aquifer zoning law, and to plan effectively to forecast and develop innovative approaches to local and state problems.

Regional councils are in the best position to aid in that type of local and regional planning and to help build local capacities. We think it is sound policy for the State of Maine to be involved in and financially support such efforts.

Members of the Maine Association of Regional Councils and we at MMA would welcome an opportunity to discuss this draft with you.

We particularly appreciate the role your office has played in putting this issue on the front burner. The Advisory Committee's report, although criticized, has been instrumental in giving this issue the attention it deserves.

Sincerely,



Kathryn J. Rand, Director
State & Federal Relations

KJR:sj

cc: Regional Council Directors
Denise Lord
John DelVecchio

AN ACT to Strengthen State-Local Cooperation through Regional Councils

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA § 3305, sub-§ 1, ¶ D as last amended by PL 1973, c. 788, § 25, is further amended to read:

D. Upon request provide technical assistance to local and regional planning groups in the fields of planning, public housing and urban renewal. The State Planning Office may assist in forming regional planning commissions and councils of governments and may assist with financing the cost of operation of such regional planning commissions established under Title 30, ~~chapter 239; subchapter 1-A~~ chapter 204-A, subchapter II, and of councils of governments empowered under Title 30, ~~section 1983; subsection 3~~ chapter 204-A, subchapter I.

Sec. 2. 5 MRSA § 3305, sub-§ 1, ¶ E as enacted by PL 1967, c. 533, § 1 is amended to read:

E. Participate with other states or subdivisions thereof in interstate planning, and assist cities, towns, municipal corporations and regional ~~planning commissions~~ councils to participate with other states or their subdivisions in planning.

Sec. 3. 14 MRSA § 8102, sub-§ 3 as enacted by PL 1977, c. 2, § 2 is amended to read:

3. Political subdivision. "Political subdivision" means any city, town, plantation, county, administrative entity or instrumentality created pursuant to Title 30, chapters 203, ~~204~~ and ~~239~~ 204-A, quasi-municipal corporation and special purpose district, including, but not limited to, any water district, sanitary district, hospital district and school district of any type.

Sec. 4. 30 MRSA, c. 204, as last amended by PL 1983, c. 812 is repealed.

Sec. 5. 30 MRSA, c. 204-A is enacted to read:

CHAPTER 204-A
REGIONAL COUNCILS

§ 1991. Declaration of policy

The Legislature recognizes that a high level of cooperation and understanding between the State of Maine and its local governments is necessary to achieve common public goals and that coordination through regional councils is a way to achieve improved state and local cooperation. The Legislature further recognizes that regional councils are uniquely qualified to assist in the development of technical capacities of local governments; to develop regional policies, services and solutions to meet local needs; and to serve as a vital link between local governments and the state.

§ 1991-A. Forms of regional councils

The Legislature recognizes councils of governments and regional planning commissions as forms of regional councils.

§ 1991-B. Lead agency

1. State Planning Office. The State Planning Office will serve as the coordinator between regional councils and the state. The State Planning Office shall administer state funds supporting regional council tasks and provide technical assistance to regional councils for state initiatives.

2. Rulemaking. The Director of the State Planning Office may adopt rules to create standardized contract, administrative and audit requirements for regional councils.

§ 1992. Tax status

Regional councils established in accordance with this Title, are tax exempt institutions which shall be exempted only from income and sales taxes.

SUBCHAPTER I

COUNCILS OF GOVERNMENTS

§ 1994. Establishment

The municipal officers of any 2 or more municipalities, by appropriate action, and as authorized by Title 5, section 12004, subsection 10, may enter into an agreement, between or among such municipalities, for the establishment of a regional council of governments.

§ 1994-A. Contents of agreement

The agreement shall provide for representation, provided that at least half of the representatives of each member shall be municipal officers. The agreement shall specify the organization, the method of withdrawal, the method of

terminating the agreement and the grounds for suspension of member municipalities.

§ 1994-B. Powers and duties

1. Powers. The council shall have the power to:

A. Study such area governmental problems common to 2 or more members of the council as it deems appropriate, including but not limited to matters affecting health, safety, welfare, education, economic conditions and regional development;

B. Promote cooperative arrangements and coordinate action among its members; and

C. Make recommendations for review and action to its members and other public agencies that perform functions within the region.

2. --other. The council may, by appropriate action of the governing bodies of the member municipalities, exercise such other powers as are exercised or capable of exercise separately or jointly, by the member governments and necessary or desirable for dealing with problems of local concern.

3. Standing committee. The council may, by appropriate action of the governing bodies of the member municipalities, establish a standing committee for the purpose of preparing and maintaining a comprehensive regional plan.

4. Transfer. Where a regional planning commission has been established under subchapter II, the member municipalities, by appropriate action, may provide for the transfer of all assets, liabilities, rights and obligations of the commission to the council and for the dissolution of the commission.

5. Authority. The council may, on behalf of one or more member municipalities and upon appropriate action of the governing bodies of one or more member municipalities, exercise any power, privilege or authority capable of exercise by a member municipality, except essential legislative powers, taxing authority or eminent domain power. This authority shall be in addition, and supplemental, to any other authority granted to municipalities by the general laws, and this chapter shall be liberally construed toward the end of enabling councils to implement municipal programs and services on behalf of member municipalities, while avoiding the creation of special districts or other legal or administrative entities to accomplish these purposes.

§ 1995. Bylaws

The council shall adopt bylaws designating the officers of the council and providing for the conduct of its business.

§ 1995-A. Staff

The council may employ such staff, and consult and retain such experts, as it deems necessary.

§ 1995-B. Finances; annual report

1. Expenses. The governing bodies of the member governments may appropriate funds to meet the expenses of the council. Services of personnel, use of equipment and office space, and other necessary services may be accepted from members as part of their financial support.

2. Governmental funds. The council may accept funds, grants, gifts and services from the government of the United States or its agencies, from this State or its departments, agencies or instrumentalities or from any other governmental unit whether participating in the council or not, and from private and civic sources.

3. Report. It shall make an annual report of its activities to the member governments.

4. Borrowing. To accomplish the purposes of this chapter and for paying any indebtedness and any necessary expenses and liabilities incurred therefor, the council may borrow money and issue therefor its negotiable notes having such terms and provisions as the governing body of the council determines. The council may contract with one or more member municipalities for the receipt of funds to accomplish any of the purposes authorized by this subchapter and may incur indebtedness in anticipation of the receipt of such funds by issuing its negotiable notes payable in not more than one year, which notes may be renewed from time to time by the issue of other notes, provided that no notes may be issued or renewed in an amount which at the time of issuance or renewal exceeds the amount of funds remaining to be paid under contracts with one or more member municipalities.

SUBCHAPTER II
REGIONAL PLANNING COMMISSIONS

§ 1996. Establishment

Any 7 or more municipalities, all of which are within one regional planning and development district and within one subdistrict if any, may by vote of their municipal officers join together to form a regional planning commission. The purpose of a regional planning commission shall be to promote cooperative efforts toward regional development, prepare and maintain a comprehensive regional plan, coordinate with state and federal planning and development programs and to provide planning assistance and advisory services to municipalities. In preparation of a comprehensive plan, the public shall be given an adequate opportunity to be heard.

§ 1996-A. Incorporation; powers

Regional planning commissions shall be incorporated in accordance with Title 13, chaptr 81, and shall possess all powers of a corporation organized without capital stock, except as limited by this subchapter.

§ 1996-B. Representation

The commission's governing body shall consist of representatives of each member municipality appointed by the municipal officers. Municipalities with less than 10,000 population as determined by the last Decennial Census shall have 2 representatives. Municipalities with populations greater than 10,000 as determined by the last Decennial Census shall have 2 representatives and an additional representative for each 10,000 increment in population or major part

thereof over 10,000. At least one representative for each municipality shall be a municipal officer or the chief administrative official of the municipality or their designee, who shall serve at the pleasure of the municipal officers or until he ceases to hold municipal office. All other representatives shall serve for a term of 2 years and may be removed by the municipal officers for cause after notice and hearing. A permanent vacancy shall be filled for the unexpired term in the same manner as a regular appointment.

A regional planning commission may, in its bylaws, provide for voting membership of one or more counties within its regional planning and development district or subdistrict. A county shall have no more than 2 representatives. The commission may by bylaw provide for one alternate representative for each member municipality or county.

§ 1997. Bylaws; records

The commission shall adopt bylaws not inconsistent with this subchapter, designating the officers of the commission and providing for the conduct of its business.

The minutes of the proceedings of the commission shall be filed in the office of the commission and shall be public record. Copies shall be provided to the municipal officers and planning board of each member municipality.

§ 1997-A. Finances

The commission shall prepare an annual budget and shall determine on an equitable basis the contribution of each member municipality toward the support of the commission.

The commission may accept funds, grants, gifts and services from the government of the United States or its agencies, from the State or its departments, agencies or instrumentalities, from any other governmental unit, whether a member or not, and from private and civic sources.

§ 1997-B. Staff services

To avoid duplication of staffs for various regional bodies assisted by the Federal Government, a commission may provide basic administrative and research and planning services for any regional development and planning bodies presently or hereafter established in Maine.

Sec. 6. 30 MRSA , c. 239, subchapter I-A as last amended by PL 1977, c. 342, § 1, is repealed.

Sec. 7. 30 MRSA § 4523 as enacted by PL 1973, c. 534, § 4 is amended to read:

For the purposes of this subchapter, regional planning commissions shall also mean councils of government established pursuant to chapter ~~204~~ 204-A, subchapter I.

Sec. 8. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1985-86	1986-87
EXECUTIVE DEPARTMENT		
State Planning Office		
All other	\$500,000	\$500,000
	<hr/>	<hr/>
Total	\$500,000	\$500,000

R. DONALD TWITCHELL, OXFORD, CHAIR
 EDGAR E. ERWIN, OXFORD
 MELVIN A. SHUTE, WALDO

MARTHA FREEMAN, LEGISLATIVE ASSISTANT
 JOHN SELSER, LEGISLATIVE ASSISTANT
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 W. NORMAN WALKER, SKOWHEGAN

STATE OF MAINE

ONE HUNDRED AND ELEVENTH LEGISLATURE

LOCAL AND COUNTY GOVERNMENT

James E. Tierney, Attorney General
 State House Station # 6
 Augusta, Maine 04333

Dear Mr. Tierney:

The Joint Standing Committee on Local and County Government has been studying the organization and authority of Regional Planning Commissions and Councils of Governments. That study has focused on what types of services a regional planning agency should provide and to whom these services should be provided as well as how much oversight currently exists concerning the role of regional planning agencies.

As a result of that study, the Committee has learned that the First Aroostook Corporation, operating as a wholly owned subsidiary of the Northern Maine Regional Planning Commission, intends to employ or is employing, on a contract basis, employees of the Northern Maine Regional Planning Commission to bid on and provide contractual services to municipalities and possibly to the private sector. The First Aroostook Corporation has been incorporated as a profit making organization under the laws of this state. The Northern Maine Regional Planning Commission has indicated that the "main function that the First Aroostook Corporation was designed to serve was to take the original and innovative design and sales rights for the garbage incineration facility,..., and market that facility realizing a profit from that marketing on a multi-state basis."

The Committee believes that any number of members of the governing board of the Northern Maine Regional Planning Commission may privately join together to form a profit making corporation. The Committee also believes that state law does not prohibit any employee of a regional agency from working on their own time for a profit making corporation. However, since the Northern Maine Regional Planning Commission has indicated that the First Aroostook Corporation is a wholly owned subsidiary of the commission, the Committee has expressed some concern about the legality of that relationship.

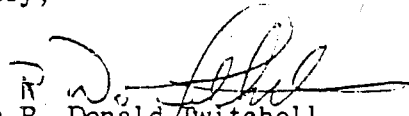
The Committee requests that you investigate the following areas of concern:

1. May the Northern Maine Regional Planning Agency, a non-profit quasi-governmental agency, own, as a subsidiary, a private for-profit corporation, specifically the First Aroostook Corporation?

2. May the Northern Maine Regional Planning Commission sell any rights it has to an incenerator to a for-profit corporation in hopes of getting a profit from future sales of that device?

We have enclosed a copy of the full report of the study and other related documents which this committee has received. Any information we have is available from our study staff, John R. Selser, Office of Legislative Assistants, Ph: 289-2486. Thank you for your consideration of this request.

Sincerely,


Senator R. Donald Twitchell


Representative Edward A. McHenry

JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333
January 8, 1985

Representative John P. Daggett
House of Representatives
State House Station #2
Augusta, Maine 04333

Dear Representative Daggett:

You have requested an opinion of this office concerning the legal authority of a Regional Planning Commission ("RPC"), authorized and organized pursuant to state statute, to form a wholly-owned profitmaking subsidiary corporation. This question was prompted by the formation of such a corporation by the Northern Maine Regional Planning Commission (the "Commission") for the purpose of selling personal services and property rights in a certain design for a solid waste incinerator. For the reasons which follow, it is the opinion of this office that a regional planning commission has no legal authority to form a subsidiary corporation to perform any act which it could not perform itself, and, since such a commission is limited by statute to purely advisory functions, it cannot form a corporation to engage in the sale of goods or services.

The relevant facts are as follows: The Northern Maine Regional Planning Commission was founded in 1969, pursuant to the Regional Planning Commission Act, 30 M.R.S.A. § 4501 et seq. In addition, the Commission was incorporated under the Maine Nonstock Corporation Act, 13 M.R.S.A. § 901 et seq. This latter statute was primarily intended for corporations devoted to a "benevolent or nonprofit-making purpose," including civic activities, but it also authorized corporations established "for the purpose of fostering, encouraging and assisting the physical location, settlement or resettlement of industrial, manufacturing, fishing, agricultural and other business enterprises and recreational projects in any locality within the state." The Articles of Incorporation of Northern Regional Planning Commission, Inc. recite these latter purposes as among its corporate purposes, in addition to purposes appropriate to a regional planning commission.

In 1981, the Commission formed the First Aroostook Corporation, Inc. pursuant to the Maine Nonprofit Corporation Act, 13-B M.R.S.A. § 101 et seq., a statute enacted in 1977. P.L. 1977, c. 525. All of the stock of the First Aroostook Corporation is owned by Northern Regional Planning Commission, Inc. Documents provided to this Office suggest that the First Aroostook Corporation has so far been inactive, but that it was created (1) to market certain property rights in the design of a municipal incinerator, and (2) to offer personal services on a contract basis, including the services of persons also employed by the Commission.^{1/} The rights to sell the incinerator design were assigned to First Aroostook Corporation by the Commission, which evidently never intended to exercise them.^{2/} In addition, the Commission apparently believes that it could not legally sell personal services to "private people,"^{3/} although it has sold personal services (engineering design, construction supervision) to public or quasi-public entities, including non-members.^{4/}

Any analysis of the legality of the formation of the First Aroostook Corporation, Inc. must begin with the Regional

^{1/} May 3, 1983 letter of Philip Peterson, Northern Maine Regional Planning Commission Chairman, to the Local and County Government Committee, and Excerpt of Minutes of Northern Maine Regional Planning Commission meeting of February 5, 1982.

^{2/} Id.

^{3/} Id.

^{4/} Letter of January 20, 1983 from Daniel Bridgham, Northern Maine Regional Planning Commission Project Inspector, to Richard Green of the Maine Department of Environmental Protection, concerning inspection contract with Aroostook-Prestile Treatment District; letter of April 28, 1983 from Richard Engles, Northern Maine Regional Planning Commission attorney to the Local and County Government Committee. The question of whether the provision of such design and construction supervision services is within the power of the Commission is beyond the scope of this Opinion. As indicated below, the statutory functions of an RPC is essentially the provision of "planning assistance and advisory services." 30 M.R.S.A. § 4511. If "planning" is considered to be distinct only from actual construction, then the design of a structure or facility, and its presentation in the form of engineering plans, could be considered not only "planning assistance," but also an "advisory service." Even by this reading, however, construction supervision or other services involved in the execution of a plan would appear to fall beyond the scope of "planning assistance and advisory services." Moreover, the RPC Act provides that these services may be given only "to municipalities," which apparently refers only to member municipalities. 30 M.R.S.A. § 4522(8). The Legislature may wish to clarify the statute in this respect.

Planning Commission Act, since it is axiomatic that a subsidiary of a legal entity cannot engage in activities which the entity itself cannot undertake. Associated Hospital Services of Maine v. Mahoney, 161 Me. 391, 404 (1965). At the time of the incorporation of Northern Regional Planning Commission (in 1969), the Act clearly specified the "powers and duties" of regional planning commissions. 30 M.R.S.A. § 4504 (1964). As stated in the first subsection of that statute:

1. Jurisdiction

- A. The jurisdiction of a regional planning commission includes the area of its members.
- B. The power of the commission is advisory, and pertains generally to the development of the whole region, or to the solution of a problem which involves more than one member.

The Act was then repealed and replaced in 1973. P.L. 1973, ch. 534, §§ 3, 4. The new Act provided that:

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 federal planning and development programs and to provide planning assistance and advisory services to municipalities. 30 M.R.S.A. § 4511.

In addition, the statute required that RPCs be incorporated pursuant to the Maine Nonstock Corporation Act, 13 M.R.S.A. § 901 et seq.^{5/} and that they

. . . shall possess all powers of a corporation organized without capital stock, except as limited by this subchapter.
30 M.R.S.A. § 4512 (emphasis added).

The clear intention and legal effect of this statutory scheme is evident: a regional planning commission is legally limited to the planning and advisory functions set forth in Section 4511 of the RPC Act. The fact that it is required to be incorporated as a nonstock corporation does not authorize it to engage in non-advisory activities appropriate to other nonstock corporations (such as benevolent, civic or business development activities) because the provision of the RPC Act

^{5/} As indicated above, the Northern Maine Regional Planning Commission had already been incorporated under this statute at the time of its creation in 1969.

requiring such incorporation expressly states that an RPC's ability to exercise the powers of a nonstock corporation are "limited by this subchapter." Thus, since an RPC can only engage in planning and advisory activities in the first place, an incorporated RPC can do no more.

The question which you pose thus resolves into one of whether the proposed activities of the First Aroostook Corporation could be engaged in by the Northern Maine Regional Planning Commission. As indicated above, these activities appear to be (1) the sale of property rights, and (2) the sale of engineering or other personal services.

In the opinion of this Office, neither of these types of activities are within the scope of the purely planning and advisory functions for which regional planning commissions are expressly intended, nor can they be considered powers implicitly held by the Commission, as necessary to carry out its express purposes. "The implied powers of a corporation are not limited to such as are indispensably necessary to carry into effect those which are expressly granted, but comprise all that are necessary, in the sense of being appropriate, convenient and suitable for such purposes, including the right of a reasonable choice of means to be employed." Flaherty v. Portland Longshoremen's Benevolent Society, 99 Me. 253, 255-6, 59 A. 58 (1904). The offering of property or personal services for sale are certainly not indispensable to the performance of a regional planning commission's planning and advisory responsibilities. The statute plainly contemplates that regional planning commissions will provide services only to their members, and that such services will be supported by contributions from the members, or by grants or gifts. 30 M.R.S.A. § 4515 (1978); formerly 30 M.R.S.A. § 4502(2) and § 4504(2)(C), (1965). Although the Commission, and indirectly its member municipalities, would no doubt be benefitted by the sale of property or personal services, through a reduction of the costs of its planning services, the same can be said of any income-producing activity. The bare benefit of subsidizing authorized activities through income-producing activities is insufficient to bring such activities within the implied powers of a corporation having limited statutory purposes. Gardiner Trust Co. v. Augusta Trust Co., 134 Me. 191, 182 A. 685, 689 (1936); Davis v. Old Colony R.R., 131 Mass. 258, 275-6 (1881); Teele v. Rockport Granite Co., 224 Mass. 20, 112 N.E. 497, 498 (1916); 19 C.J.S. Corporations § 945(b).

The sale of the incinerator design "on a multi-state basis" offers no direct or immediate assistance to the performance of its functions by the Commission. This office cannot perceive, nor does the Commission suggest, any benefit from marketing the design beyond first, recovering the investment for the member communities participating in the incinerator, and thereafter, a subsidy of the Commission's statutory functions. The first of

these is not for the benefit of the Commission at all. Although the second objective may be indirectly beneficial financially to the member municipalities, we consider the marketing of property rights to be "foreign in nature to those [powers] contemplated" in the authorizing legislation,^{8/} involving the Commission in "remote and un contemplated lines of activity,"^{7/} and thus beyond the power of a regional planning commission.^{8/}

Likewise, the sale of engineering design services, or any personal services other than "assisting any of its members in solving a local planning problem,"^{2/} is without benefit of statutory authorization, and appears to benefit the Commission, or its membership as a whole, only through the production of income. Since such services are of a different type entirely from "planning assistance," and are provided on a fundamentally different basis from "advisory services to municipalities," and their sale serves in no direct way "to promote cooperative efforts toward regional development," 30 M.R.S.A. § 4511 (1978), the sale of such services to members or non-members must be considered beyond the authority of a regional planning commission.^{10/}

* * * *

In summary, therefore, it is the view of this Office that activities discussed herein are beyond the express and reasonably implied powers of a regional planning commission, which is a creature of statute limited to the functions set forth in its authorizing legislation, or necessarily implied in order to enable the accomplishment of those functions. Such

^{8/} Oakland Electric Co. v. Union Gas and Electric Co., 107 Me. 279, 282, 78 A. 288 (1910).

^{7/} Good Will Home Association v. Erwin, 266 A.2d 218, 221 (Me. 1970).

^{8/} See also 13 M.R.S.A. § 932, which authorizes nonprofit corporations generally to "use and dispose [of property] only for the purposes for which the corporation was organized."

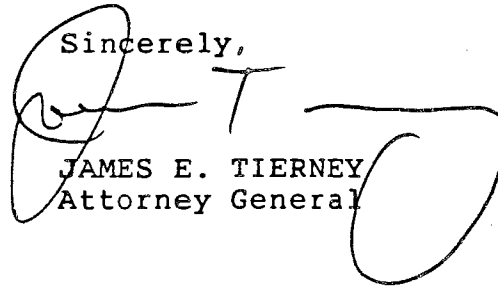
^{2/} See 30 M.R.S.A. § 4522(8)(C), (1978), formerly 30 M.R.S.A. § 4504(4)(C), (1965), providing a separate method of payment for such services. But see note 4, supra.

^{10/} Direct services to advance any legitimate municipal project could certainly be provided by an employee or contract agent of the municipality itself. In contrast to regional planning commissions, it is noteworthy that a Council of Governments is expressly authorized to "exercise such...powers as are...capable of exercise...by the member governments..." so long as that exercise is authorized by the member municipalities. 30 M.R.S.A. § 1983(2) (1978).

activities may not, therefore, be undertaken by a subsidiary of such a commission and the formation of a subsidiary for those purposes is unauthorized by law. This is not to say, of course, that the constituent municipalities of a regional planning commission may not accomplish these objectives through some other means, such as through an agreement entered into pursuant to the Interlocal Agreement Act, 30 M.R.S.A. § 1951 et seq. It is also not to say that such powers could not be given to a regional planning commission by a legislative enactment. It is only to say that such profit-making activities cannot be undertaken by a regional planning commission or its subsidiary corporation.^{11/}

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

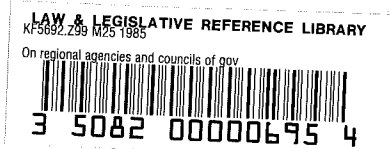
Sincerely,



JAMES E. TIERNEY
Attorney General

JET/ec

cc: Richard E. Barringer



^{11/} It has been suggested by counsel for Northern Maine Regional Planning Commission that its designation as a Regional Planning and Development District under 30 M.R.S.A. § 4521 and 4522 expands the powers of the Commission beyond those in the authorizing legislation. While this statement is correct, the powers conferred by these statutes are likewise limited to reviewing plans, providing coordination between different governmental entities, and other such advisory services within the scope of planning assistance.