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REGIONAL PLANNING AGENCIES

Report of a Study by the
JOINT STANDING COMMITTEE ON LOCAL AND COUNTY GOVERNMENT
to the
111th Maine Legislature
January, 1984

Study Subcommittee:

Rep. Edward A. McHenry (Chair & Committee
Chair)
Rep. Ada Brown
Rep. Stephen Bost
Rep. Douglas Curtis
Rep. Alberta Wentworth

Additional Members of the Full Committee:

Sen. R. Donald Twitchell, (Chair)
Sen. Edgar Erwin
Sen. Melvin Shute
Rep. Phyllis Roberts
Rep. John Daggett
Rep. Dorothy Rotondi
Rep. Gennette Ingraham
Rep. Norman Walker

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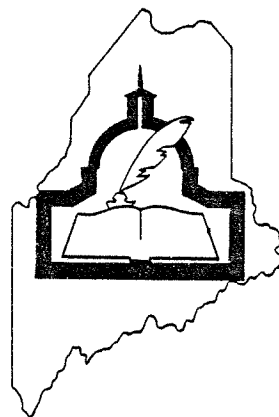


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THE REGIONAL PLANNING AGENCY STUDY

I. INTRODUCTION

During the First Regular Session of the 111th Legislature, the Joint Standing Committee on Local and County Government heard testimony on LD 763, AN ACT to Prohibit Regional Planning Commissions from Providing Contractual Services for Municipalities which can be Provided by the Private Sector. LD 763 prohibited regional planning commissions from providing contractual services to any municipality if those services could be provided by the private sector.

Testimony was heard regarding specific incidents where regional planning commissions had competed on surveying and engineering contracts with private businesses and had received the contracts. This was viewed as an intrusion of regional planning commissions into areas that could be served by private engineering, surveying, and architectural firms and was considered "unfair competition." One concern was that the overhead expenses of a normal business were being met in the case of a regional planning commission by the member municipalities, which unfairly lowered the regional planning commission's bid on the contracts. Another concern was that they were exceeding their statutory authority in spirit, if not in fact. The legitimacy of the First Aroostook Corporation, a for-profit corporation formed by the board members of the Northern Maine Regional Planning Commission, was questioned.

The Committee felt that the statutes concerning the functions of regional planning agencies were not extensive and did not provide a detailed description of the operation of those agencies. In addition, the Committee was advised that the Governor would soon be issuing an Executive Order concerning the focus of regional agencies. In order to better understand the nature and role of these regional agencies and to ascertain the Governor's focus in this area, the Committee requested and received permission to study this area of concern during the interim.

A subcommittee of the Joint Standing Committee on Local and County Government was formed to investigate the matter and report to the full committee. The subcommittee gathered information from various sources at its meetings and prepared a recommendation to the full committee. This report reflects the recommendation of the full committee.

II. BACKGROUND

Regional Planning Commissions and Councils of Governments were formed to provide regional solutions to regional problems which local governments were experiencing. The first Regional Planning Commissions (Portland, Androscoggin Valley, and Knox County) were formed in 1975 to address regional planning problems and to utilize Federal grants to regional organizations for community sewer and water quality programs.

Federal programs emphasized regional projects for many reasons, including the following: the solutions to local community needs were often regional, less grants were needed for regional projects than for individual municipal projects, political coordination was easier through regional organizations, economies were regional which made regional solutions more feasible, and more local control could be provided in regional sponsored programs than through a state sponsored program.

Regional Planning Commissions could provide planning assistance, but could not implement those plans. A multitude of special purpose districts were being formed in each instance to implement those plans. In response to that problem, in 1969, the Legislature enacted enabling legislation for a Council of Governments form of regional organization. Councils of Governments had, with a few exceptions, the same power that an individual municipality had. Councils of Governments were also more accountable to the local population since over 50% of the membership had to be locally elected officials.

In the early 1970's, the Governor established State Planning and Development Districts as a mechanism to allow the state to control the regional boundaries of the regional activities within large geographical areas. Regional organizations had authority to operate within the boundaries of the Development Districts. The boundaries were initially based on river basins and coastal areas. This arrangement reflected the early emphasis of Federal regional grant monies for river basin planning. These boundaries have been modified over time at the request of individual localities to more accurately reflect the areas which traditionally perform planning functions together, regardless of watersheds. This trend reflects the fact that regional agencies are emphasizing projects other than river basin planning.

In recent years, Federal funding to regional agencies has been greatly reduced. Regional councils have had to shift their financial bases by enlarging local funding through increasing their dues and by being more aggressive in promoting regional services. The Federal money that remains is being funnelled through the block grant programs which involves increased state participation.

III. COMMITTEE FINDINGS

A. The control for both Regional Planning Commissions and Councils of Governments lies in the governing body. Both forms of regional agencies are accountable to their governing bodies and are required to have elected officials on the governing board. The statutory structure for Councils of Governments provides for a greater accountability by virtue of the requirement that at least 51% of the members be elected officials. Regional Planning Councils may, but need not, have a majority of elected officials on their governing body.

B. The Committee finds that regional agencies provide an important function to local communities.

C. The Committee has found that regional agencies have provided far more contracts for private engineering firms than they have taken away from them through competition with those private firms.

D. The Committee could find no evidence of widespread competition of regional agencies with private enterprise in competing for contracts with the private sector. The committee did find, however, evidence that suggests the Northern Maine Regional Planning Commission and its alleged subsidiary, the First Aroostook Corporation, have been providing engineering services within their Development District. Only two agencies, Northern Maine Regional Planning Commission and Androscoggin Valley Council of Governments, have a full-time engineer on their staff.

E. The creation of the First Aroostook Corporation as a subsidiary of the Northern Maine Regional Planning Commission may be outside the scope and authority of a regional planning agency.

F. Federal involvement with regional agencies is limited to setting standards of eligibility for Federal grant programs. These standards are specific to each grant. There are no Federal standards or guidelines in general for regional agencies or their projects except for those involving Federal money.

G. The Committee found a decrease in Federal funding which has put pressure on regional agencies to find other revenue sources. Several regional agencies have already become or are on the verge of becoming inoperative. Much of the Federal money which is available is being funnelled through state agencies.

H. The Committee finds that there is a need for greater involvement by the state in the activity of regional agencies in view of the increased state role that is required.

I. The Committee finds that the regional agencies and the consulting engineers, surveyors, and architects have initiated a meaningful dialogue to attempt to resolve, on a voluntary basis, any problems they may have of mutual concern to both parties.

IV. RECOMMENDATIONS

A. The Committee recommends that the Attorney General, in conjunction with the Secretary of State, investigate the authority and activity of the First Aroostook Corporation in regard to its relationship with the Northern Maine Regional Planning Commission. The Committee recognizes that any number of members of the Northern Maine Regional Planning Commission may privately join together to form a for-profit corporation under the laws of this state and that state law does not prohibit any employee of a regional agency from working on their own time for a for-profit corporation. However, in view of the admitted connection between the Northern Maine Regional Planning Commission and the First Aroostook Corporation, the Committee questions whether a planning agency may own, as a subsidiary, a private for-profit corporation and whether the planning agency may sell any rights it has to an incinerator to a for-profit corporation in hopes of getting a profit from future sales of that device.

B. The Committee recommends the creation and implementation of written guidelines for the operation of a regional agency. It is felt that this is necessary in light of the pressures on regional agencies to find other revenue sources and the apparent increase in engineering contracting by the Northern Maine Regional Planning Commission. These guidelines should establish policies on:

1. What services should a regional planning agency 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 ?

The State Planning Office is currently coordinating the distribution of Federal grant money and the implementation of other projects to regional planning agencies. In view of their current involvement and experience in dealing with regional planning agencies, the Committee recommends that the State Planning Office be requested to coordinate the establishment and implementation of these policy guidelines. The Committee will request that the State Planning Office report on the progress of this effort no later than July 1, 1984. This Committee will request that the State Planning Office serve as the lead agency to implement this recommendation and will encourage them 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 having jurisdiction over local and county government,
2. Maine Association of Regional Councils,
3. Consulting Engineers of Maine, and
4. Maine Municipal Association.

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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.

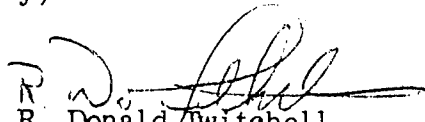
The Committee requests that you investigate the following areas of concern:

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 incinerator 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

SENATE

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 EDGAR E. ERWIN, OXFORD
 MELVIN A. SHUTE, WALDO

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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?

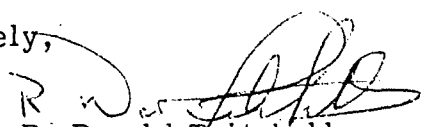
Should you agree to coordinate this effort, the Committee encourages you to seek the participation of other interested parties to include, but not to be limited to, members of the following groups:


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 reponse to this request.

Sincerely,


Senator R. Donald Twitchell


Representative Edward A. McHenry