

# COUNTY COMMISSIONERS LEGAL RESPONSIBILITY

A Statutory and Case Law Review

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# COMMISSIONER AUTHORITY

## I. Commissioner Authority

a. Commissioners legal authority is “wholly derived by statute.” State v. Vallee, 136 Me. 432, 446, 12 A.2d 421 (1940).

i. Registry of Probate and judge of Probate are “constitutionally created offices.” Me. Const. Art. VI, § 6.

Historical Footnote – Legislature repealed § 6 in 1967, but it will not take effect until “such time as the Legislature by proper enactment shall establish a different Probate Court System with full time judges.”

ii. Sheriff is a constitutional office. Me. Const. Art. IX, § 10.



## COMMISSIONER AUTHORITY (con't)

b. Section 101 – Commissioner Duties

- i. Receipts and expenditures
- ii. Represent the county
- iii. Manage property and business
- iv. Convey real estate
- v. Lay out, alter county ways
- vi. Keep books and accounts
- vii. Adopt ethics policy
- viii. Support State Board of Corrections
- ix. Perform all other duties required by law

c. Section 102 – Commissioners have “final authority” over the operation of all county offices by elected or appointed county official.”

## COMMISSIONER AUTHORITY (con't)

### d. Limitations to “Final Authority”

- i. *York County Bd. of Realtors v. York County Comm'rs*, 634 A.2d 958 (Me. 1993) In 1993, the Legislature approved a budget that was approximately \$91,000 less than the Commissioners had requested. In response to the “perceived budget cut,” the Commissioners closed offices of the York County Register of Deeds and Probate Court for one week as a “furlough.” The Court held that because the statute also provided that the Probate Court and the Registry of Deeds should be open to the public, and the Commissioners lacked the authority to close them based on 30-A M.R.S. § 103 (2013) (providing Commissioners with the authority to set opening hours for county buildings), the closure was unlawful.

*Broader implications:* Even if it appears that the statute confers the Commissioners with the authority to take certain actions (e.g., closure), those provisions must be read in context of the entire statute.

## COMMISSIONER AUTHORITY (con't)

# SHERIFFS

- ii. **Sheriffs:** “Chief county law enforcement officers” tasked with administering and directing the sheriff’s department. [30-A M.R.S. § 401\(1\) \(2013\).](#)

- 1. [Me. Sherriff’s Assoc. v. Knox County Comm’rs, 2012 Me. Super. LEXIS 91, at \\*8-9 \(Mar. 2, 2012\).](#)

Knox County enacted a charter in which Commissioners were permitted to oversee internal investigation by the sheriff’s office and participate in hiring. The court held that the Commissioners (and any administrators which they appoint) are not permitted to usurp the responsibilities specifically allocated to the sheriff in [section 401](#) to administer and direct the sheriff’s department. Thus, the county charter giving an administrator the authority to “direct and supervise the operation of all County departments,” was unlawful.

- iii. The Commissioners’ authority to employ, select applicants, and dismiss or discipline employees of the county does not apply to Chief Deputies in the Sheriff’s office—who are instead employed by the Sheriff directly. [30-A M.R.S. § 501\(5\) \(2013\).](#)



## COMMISSIONER AUTHORITY (con't)

### SHERIFFS (con't)

- iv. Commissioners regularly review the sheriff's operations "to ensure that the law enforcement functions required under the budget are being adequately performed." [30-A M.R.S. § 401\(2\) \(2013\)](#).
- 1. Commissioners cannot give orders directly to sheriffs or subordinates. [30-A M.R.S. § 401\(2\) \(2013\)](#).
  - a. [Clark v. Hancock County Comm'rs, 2014 ME 33, ¶¶ 10-20, 87 A.3d 712.](#)

Deputy Sheriff was driving home from patrol and struck a deer at 92 miles per hour. It totaled his cruiser and he was suspended for one day and restricted from obtaining a new patrol car by the sheriff. Commissioners held a vote to also require the Deputy Sheriff to pay the \$1,000 insurance deductible that the county paid to the automobile insurance company. The Sheriff filed a complaint for review of the Commissioner's decision as discipline of the Deputy Sheriff in violation of [section 501\(3\)](#). Court held that because Commissioners voted to rescind this order of payment, the case had become moot.

## COMMISSIONER AUTHORITY (con't)

### SHERIFFS (con't)

#### i. Request for Attorney Fees.

1. Sheriff requested his attorney fees and costs from the Commissioners pursuant to 30-A M.R.S. § 373(2) (Commissioners “shall allow . . . necessary incidental expenses as are just and proper.”)

Court denied because Sheriff failed to seek reimbursement from the Commissioners, thereby deprived Commissioners opportunity to consider request.

## COMMISSIONER AUTHORITY (con't)

### SHERIFFS (con't)

- b. *Bolduc v. Androscoggin County Comm'rs*, 485 A.2d 655, 658-59 (Me. 1984) (applying Title 30, which was repealed in 1988). Deputy sheriff had been answering the phones “Hello, county morgue,” and “Good afternoon, Mabel’s. How may I help you?” so the sheriff recommended to the Commissioners that his employment be terminated. Commissioners agreed, and the former Deputy Sheriff filed a complaint in the Superior Court arguing that the Commissioners could not dismiss employees whom they do not directly employ. The court held that because the Commissioners essentially upheld the sheriff’s dismissal, there was no error.

Note: Current law requires approval of dismissal for cause by Commissioners *except* with respect to Chief Deputies when appointed, suspended, disciplined, or dismissed by a sheriff. 30-A M.R.S. § 501(3), (5) (2013).



## COMMISSIONER AUTHORITY (con't)

### SHERIFFS (con't)

- v. Commissioners may remove a sheriff, “[w]henever the[y] find that the sheriff is not faithfully or efficiently performing any duty . . . or that the sheriff is improperly exercising . . . the sheriff’s authority.” [30-A M.R.S. § 441 \(2013\)](#).
  - 1. Commissioners must first file a complaint with the Governor detailing the reasons for seeking removal and the Governor may dismiss the sheriff and appoint a new sheriff to replace him or her. [30-A M.R.S. § 441 \(2013\)](#).
- vi. [Opinion of the Attorney General, 1986 Maine AG 1 \(Dec. 22, 1986\)](#)  
(Note: this opinion is based on the Attorney General’s interpretation of Title 30, which was repealed in 1988, *see* [P.L. 1988, ch. 737](#)).

Commissioners and the Sheriff cannot privately contract with a corporation to manage and operate a county jail because that action is not authorized by the statute.

# DISTRICT ATTORNEYS

e. **District Attorneys:**

- i. **Civil Proceedings:** Commissioners must direct the district attorney in civil proceedings in which the county is named as a party or is interested, or when official acts are called into question. [30-A M.R.S. § 282 \(2013\).](#)
- ii. **Criminal Proceedings:** prosecute all criminal cases in the prosecutorial district in which that attorney was elected. [30-A M.R.S. § 283 \(2013\).](#)
  1. [\*Watts Detective Agency v. Sagadahoc County\*, 137 Me. 233, 240-41, 18 A.2d 308 \(1941\).](#)

A District Attorney hired a private detective to investigate a criminal case at county expense. The Commissioners reported the legal question to the Supreme Court, who held that based on the Commissioners' duties to make estimates and assess taxes, the District Attorney and other officers do not have the authority to incur costs without prior approval from the Commissioners.

# OVERSEE COUNTY STAFF

f. **Oversee County Staff:**

- i. Commissioners “as a Board” have “Final authority over the operation of all county offices by elected or appointed county officials.” [30-A M.R.S. § 102 \(2013\)](#).
- ii. Application of Section 102.
  1. Hiring: Before hiring, county officers or department heads must submit the name of the person they seek to employ to the Commissioners for approval. [30-A M.R.S. § 501\(1\) \(2013\)](#).
    - a. “All county employees shall be appointed *without regard to any political affiliation* and solely on the basis of professional qualifications relating to the work to be performed or their potential for acquiring those qualifications.” [30-A M.R.S. § 501\(2\) \(2013\)](#) (emphasis added).
    - b. If the selected person is not approved, Commissioners must state the reason for disapproval to the county officer or department head within fourteen days. [30-A M.R.S. § 501\(1\) \(2013\)](#).
    - c. No mandatory retirement age. [30-A M.R.S. § 502 \(2013\)](#).



## COMMISSIONER AUTHORITY (con't)

### OVERSEE COUNTY STAFF (con't)

#### 2. Discipline & Dismissal:

- a. At a county employee's request, the Commissioners review the disciplinary action taken against that employee by a superior. After investigation of "circumstances and fairness of the action," Commissioners may overrule the decision and reinstate the employee's rights, benefits, or position. [30-A M.R.S. § 501\(3\)\(B\) \(2013\).](#)
- b. Dismissal of any county employee requires the approval by the Commissioners and must be "for cause" or to meet the requirements of budget cuts or governmental reorganization. [30-A M.R.S. § 501\(3\)\(A\) \(2013\).](#)

## COMMISSIONER AUTHORITY (con't)

## OVERSEE COUNTY STAFF (con't)

c. *Struck v. Hackett*, 668 A.2d 411, 416-18 (Me. 1995)

Patrol deputy was dismissed from his employment during a probationary period without the approval of the County Commissioners after investigation revealed that his live-in girlfriend, also a county employee, had embezzled funds from the sheriff's office. Sheriff did not seek Commissioners' approval of the dismissal pursuant to section 501(3)(A). The court held that because the deputy was still serving his probationary period, his dismissal was lawful although it was not approved by the County Commissioners.

## COMMISSIONER AUTHORITY (con't)

## OVERSEE COUNTY STAFF (con't)

### *Broader Implications:*

(1) Although the statute indicates that Commissioners must give their approval before any employee may be dismissed, that provision must be read in context of the entire statute. Where, for example, an employee is subject to an initial probationary status, *see* [30-A M.R.S. § 381 \(2013\)](#) (providing that deputy sheriffs are subject to initial probationary period) dismissal without Commissioner approval is permissible.

(2) County employees are dismissed only “for cause” pursuant to [section 501\(3\)\(A\)](#), and therefore they may have a constitutional property right in their employment. *Struck*, 668 A.2d at 417. Thus, an employee is entitled to a notice and a hearing before he or she may be dismissed pursuant to the U.S. Constitution’s Due Process Clause.



## COMMISSIONER AUTHORITY (con't)

### OVERSEE COUNTY STAFF (con't)

#### 3. Personnel records:

##### d. Records of County Personnel are Confidential:

- i. Applications: Records used in applications for county positions such as resumes, applications, letters of reference, research materials, or examinations. [30-A M.R.S. § 503\(1\)\(A\) \(2013\)](#).
- ii. Job Performance: medical information, performance reviews, creditworthiness of a county employee, personal history or general character of the employee, including background checks, and complaints or charges of misconduct are also confidential until a final written decision imposing discipline. [30-A M.R.S. § 503\(1\)\(B\) \(2013\)](#).
  1. If a final written disciplinary decision is overturned on appeal or by an arbitrator, the decision is public except for the employee's name, which must be redacted.

## COMMISSIONER AUTHORITY (con't)

### OVERSEE COUNTY STAFF (con't)

- e. Employees or former employees have a right to review their own personnel records. [30-A M.R.S. § 503\(2\) \(2013\)](#).
- 4. Personnel Board. Alternatively, County Commissioners may establish a County Personnel Board that will have the same duties as the Commissioners with respect to approval of all new county employees and discipline of current employees. [30-A M.R.S. § 523 \(2013\)](#).

# **RESPONSIBILITIES OF A COUNTY COMMISSIONER**

## **II. Responsibilities of a County Commissioner**

### **a. Conflicts of Interest:**

#### **i. Incompatible Offices:**

1. Commissioners cannot simultaneously be City Mayor or City Assessor, [30-A M.R.S. § 52\(1\) \(2013\)](#).
2. Nor can Commissioners serve simultaneously as Town Selectmen or Town Assessor, [30-A M.R.S. § 52\(1\) \(2013\)](#).



## CONFLICTS OF INTEREST

### **ii. Voidable Official Action:**

Anytime an official has a “direct” or “indirect” financial interest in a matter that is the subject of official action, certain actions that the person takes in his or her official capacity become voidable.

## RESPONSIBILITIES OF A COUNTY COMMISSIONER (con't)

### CONFLICTS OF INTEREST (con't)

1. **How to avoid voidable official actions:** (1) Disclose the nature and extent of your interest; and (2) Abstain from voting on that issue. [30-A M.R.S. § 2605\(4\) \(2013\).](#)
  - a. **Voting:** The vote of a body is voidable when any official in an official position votes on any question in which that official has a direct or an indirect pecuniary interest. [30-A M.R.S. § 2605\(1\) \(2013\).](#)
  - b. **Contracts:** A contract is voidable if an official involved in the negotiation or award of the contract has a direct or indirect pecuniary interest in it, except if it is awarded through properly advertised bid procedures. [30-A M.R.S. § 2605\(2\) \(2013\).](#)

## RESPONSIBILITIES OF A COUNTY COMMISSIONER (con't)

### CONFLICTS OF INTEREST (con't)

2. What are “direct” or “indirect” financial interests?
  - a. The Official has a direct or indirect financial interest if he or she is any one of the following with respect to **private corporations, businesses, or other economic entities.** [30-A M.R.S. § 2605\(4\) \(2013\).](#)
    - i. Officer, Director or Partner
    - ii. Associate
    - iii. Employee
    - iv. Shareholder of more than 10% of the stock or interest in a company.



## RESPONSIBILITIES OF A COUNTY COMMISSIONER (con't)

### CONFLICTS OF INTEREST (con't)

- ii. **Former County Officials:** Former County Commissioners and officials cannot act as an attorney, agent, or otherwise participate on behalf of anyone other than the municipality or county in certain proceedings that come before County Commissioners. Two types of proceedings subject to restriction, [30-A M.R.S. § 2605\(5\) \(2013\)](#):
  - 1. **One year restriction:** On issues that were part of Commissioner's official responsibility during his/her term:
    - a. Completed issues, if resolved within one year *before* the County official's term of office ended. [30-A M.R.S. § 2605\(5\)\(A\)\(2\) \(2013\)](#).

## RESPONSIBILITIES OF A COUNTY COMMISSIONER (con't)

### CONFLICTS OF INTEREST (con't)

#### 2. **Lifetime restriction:**

- a. Pending issues, issues that were pending while the Commissioner was still in office, and within the direct responsibilities of the Commissioner and pending within one year before the County official's term of office ended. [30-A M.R.S. § 2605\(5\)\(B\)\(2\) \(2013\)](#).

#### 3. **Exception:** Personal business. Any issue involving a former commissioner's own personal business. [30-A M.R.S. § 2605\(5\)\(C\) \(2013\)](#).

- iv. **Appearance of Conflicts of Interest:** Every municipal and county official shall attempt to avoid the appearance of a conflict of interest by disclosure or by abstention. [30-A M.R.S. § 2605\(6\) \(2013\)](#).

## CODE OF ETHICS

b. Code of Ethics:

- i. **Ethics Policy:** County officials have the discretion to adopt an ethics policy governing the conduct of elected or appointed county officials. 30-A M.R.S. § 2605(7) (2013)
  1. York County Budget Committee v. York County Comm'rs, 2014 Me. Super. LEXIS 26, at \*8 (Mar. 10, 2014). Any ethics policy may not alter or supersede the processes provided by statute.



## WHEN CAN MISCONDUCT BECOME A CLASS E CRIME?

c. **When Can Misconduct Become a Class E Crime?**

- i. **Dealing with county finances.** 30-A M.R.S. § 7 (2013) provides that “willful” violations of certain provisions may constitute a Class E crime.
  1. Tax and Budget Estimates: § 701: Requiring county officials to make estimates and assess taxes within certain parameters. [30-A M.R.S. § 701 \(2013\)](#).
  2. Capital Reserve Accounts § 921: Requiring County Commissioners to maintain capital reserve accounts, specifying the purpose for the funds that are set aside in that account. [30-A M.R.S. § 921 \(2013\)](#).

RESPONSIBILITIES OF A COUNTY COMMISSIONER (con't)

WHEN CAN MISCONDUCT BECOME A CLASS E CRIME?  
(con't)

3. Transfer of Budget Funds § 922: Permitting County Commissioners to transfer funds from one specific appropriation to another, if that appropriation has insufficient funds to meet the expenditure on two conditions:
  - a. (1) Written approval of a majority of the Commissioners and
  - b. (2) A written record of all transfers made, certified by the Commissioners within 30 days after the transfer. [30-A M.R.S. § 922 \(2013\)](#).
  - c. Also requiring Commissioners to maintain a contingent fund for budget items that have insufficient funds.
4. Balances to be Carried Over § 923: Requiring any unexpended balance of funds to be carried over into the next year for the same purpose for which the funds were originally appropriated. [30-A M.R.S. § 923 \(2013\)](#).

WHEN CAN MISCONDUCT BECOME A CLASS E CRIME?  
(con't)

5. Use of Surplus Funds § 924: Governing the use of unencumbered surplus funds, meaning revenue that exceeds budget estimates, or unexpended balances from the prior fiscal year. 30-A M.R.S. § 924 (2013)
  - a. First, to restore the contingent funds.
  - b. Second, to reduce the amount of taxes levied in the following fiscal year.
  - c. Finally, can be used as “working capital” to fund a county charter commission, or to establish capital reserve accounts.
    - i. Correctional surpluses may not be used for noncorrectional purposes.



RESPONSIBILITIES OF A COUNTY COMMISSIONER (con't)

WHEN CAN MISCONDUCT BECOME A CLASS E CRIME?  
(con't)

6. Audits and Financial Administration of the County § 951: Providing that County budgets shall be audited annually, requiring Commissioners to be responsible for the proper financial administration of each county. 30-A M.R.S. § 951 (2013)
  - a. Any improper transactions are reported by the auditor to the district attorney.

# CIVIL VIOLATIONS

d. **Civil Violations:**

- i. **Neglect of official duty.** Officials who neglect or refuse to perform a duty of their office are subject to a fine of up to \$100. [30-A M.R.S. § 2607 \(2013\).](#)
- ii. **Failure to follow statutory requirements.** Failure to comply with Subchapter 3 of Title 30-A, which governs the election of County Commissioners, duties with respect to the deposit or investment of county funds, and accounting by the Treasurer to the Commissioners, is a civil violation punishable by a fine of up to \$200. [30-A M.R.S. § 8 \(2013\).](#)

# CONDUCTING ADMINISTRATIVE AND ADJUDICATORY HEARINGS

## III. Conducting Administrative and Adjudicatory Hearings

### a. Does “Due Process” Apply?

#### i. Generally:

1. Both an applicant and members of the public “entitled under the [D]ue [P]rocess [C]ause of the United States and Maine [C]onstitutions to a fair and unbiased hearing.” [\*Duffy v. Town of Berwick\*, 2013 ME 105, ¶ 15, 82 A.3d 148.](#)
2. Due Process Clause “protects against the exercise of arbitrary governmental power and guarantees equal and impartial dispensation of law according to the settled course of judicial proceeding or in accordance with fundamental principles of distributive justice.” *Id.*
3. What constitutes due process depends primarily on the alleged right involved, the nature of the proceedings and the possible burden upon the proceeding.
4. Flexible concept of due process.



**CONDUCTING ADMINISTRATIVE AND ADJUDICATORY HEARINGS**  
**(con't)**

**b. Useful Guide: Maine Administrative Procedure Act**  
**5 M.R.S. § 8002 et seq.**

i. Although the Administrative Procedure Act does not apply to county governments because it applies only to “agencies,” which specifically excludes county governments, it is an invaluable resource to local governments. 5 M.R.S. § 8002(1), (2) (2013) (excluding county governments from the scope of the Administrative Procedure Act).

1. However, replicating general administrative hearing procedure will ensure “due process” rights protected.

## CONDUCTING ADMINISTRATIVE AND ADJUDICATORY HEARINGS (con't)

### c. Prehearing:

#### i. **Administrative Procedure Act Notice Requirements:** [5 M.R.S. § 9052 \(2013\)](#).

1. To person whose legal rights, duties or privileges effected. [5 M.R.S. § 9052\(1\) \(2013\)](#).
2. By regular mail “sufficiently in advance of the hearing date to afford adequate opportunity to prepare and submit evidence.” [5 M.R.S. § 9052\(2\) \(2013\)](#).
3. Notice shall include the following:
  - a. A statement of the legal authority for conducting such a proceeding.
  - b. A short and plain statement of nature and purpose of proceeding.
  - c. The time and place of hearing.
  - d. A statement of the manner and time within which the public or any interested persons may present evidence and argument. [5 M.R.S. § 9052\(3\) \(2013\)](#).

**CONDUCTING ADMINISTRATIVE AND ADJUDICATORY HEARINGS**  
**(con't)**

d. **During the Hearing:**

i. **Opportunity to Be Heard:**

1. **Administrative Procedure Act Opportunity to be Heard Requirements: [5 M.R.S. § 9056\(2\) \(2013\)](#).**

- a. Right to present evidence and argument on all issues.
- b. Right to call and examine witnesses.
- c. Right to cross-examination of any person present and testifying.



## CONDUCTING ADMINISTRATIVE AND ADJUDICATORY HEARINGS (con't)

### ii. **Evidence:**

1. Note: “[T]he highly technical rules of evidence are not, and should not, be applicable to administrative proceedings.” *Bolduc v. Androscoggin County Comm'rs*, 485 A.2d 655, 658-59 (Me. 1984).
2. **Administrative Procedure Act Evidence Requirements.**
  - a. **Admissible evidence:** Evidence shall be admitted if it is the kind of evidence “upon which reasonable persons are accustomed to rely in the conduct of serious affairs.” Agencies may exclude irrelevant or unduly repetitious evidence. 5 M.R.S. § 9057(1) (2013).
  - b. **Witness shall be sworn.** 5 M.R.S. § 9057(3) (2013).
  - c. **Written evidence.** No sworn written evidence shall be admitted unless the author is available for cross-examination.
  - d. The hearing officer rules on admissibility of evidence and conduct of proceeding.

CONDUCTING ADMINISTRATIVE AND ADJUDICATORY HEARINGS  
(con't)

- iii. **Official notice.** Agencies may take official notice of any facts of which judicial notice could be taken, and, in addition, may take official notice of general, technical or scientific matters within their specialized knowledge and of statutes, regulations and nonconfidential agency records. Parties shall be notified of the material so noticed, and they shall be afforded an opportunity to contest the substance or materiality of the facts noticed.

## CONDUCTING ADMINISTRATIVE AND ADJUDICATORY HEARINGS (con't)

### e. Decisions:

#### i. **Decisions should be in writing:**

1. **Rules for Decisions in Special Situations:** The following decisions must be in writing, stating the reason(s) for the decision, including findings of fact “sufficient to apprise the applicant and any interested member of the public of the basis for the decision.” A written copy of the decision must be made available to the public upon request. [1 M.R.S. § 407 \(2013\).](#)
  - a. Approval or denial of an application, license, certificate or other type of permit. [1 M.R.S. § 407\(1\) \(2013\).](#)
  - b. Dismissal of an employee. [1 M.R.S. § 407\(2\) \(2013\).](#)
    - i. Except for employees on probationary status.
  - c. Refusal to renew a contract. [1 M.R.S. § 407\(2\) \(2013\)](#)



## CONDUCTING ADMINISTRATIVE AND ADJUDICATORY HEARINGS (con't)

ii. **Decisions should be mailed or delivered to the person to whom the decision pertains.**

1. [Gorham v. Androscoggin County Comm'rs, 2011 ME 63, ¶ 19, 21 A.3d 115.](#)

Gorham, a corrections officer at the Androscoggin County Jail, was discharged by the Sheriff for horseplay. The Commissioners voted to uphold the dismissal in September. The Commissioners then issued the written decision on November 18, and Gorham appealed in the Superior Court on December 18. The Law Court held that the appeal met the thirty-day time limit based on the wording of Rule of Civil Procedure 80B, which allows the time for appeal to commence when notice is received regarding the Commissioners' decision.

- a. *Broader Implications:* The Law Court held that any public body, including County Commissioners, that issue written decisions pursuant to 1 M.R.S. § 407(2) (2013), are also required to "deliver[] or promptly mail[]" a copy of the decision to the parties to the proceedings, *see* [5 M.R.S. § 9061 \(2013\).](#)

## CONDUCTING ADMINISTRATIVE AND ADJUDICATORY HEARINGS (con't)

### iii. Findings of Fact:

1. [Hannum v. Bd. of Env'tl. Prot., 2003 ME 123, ¶ 18, 832 A.2d 765.](#)

Landowner sought approval from the Department of Environmental Protection to build a dock on her property, which referred the case to the Board of Environmental Protection. The Board reviewed the evidence and denied the permit, in part because it found that “other pier projects would likely follow” if this pier was approved. The Law Court overturned their decision because there was no evidence in the record to support the Board’s findings about potential future projects.

*Broader Implications:* Findings must be “supported by substantial evidence in the record,” to be upheld on appeal in a court.

## CONDUCTING ADMINISTRATIVE AND ADJUDICATORY HEARINGS (con't)

2. [Carroll v. Town of Rockport, 2003 ME 135, ¶¶ 25-31, 837 A.2d 148.](#)

Landowners filed an application in the Zoning Board of Rockport to create a twelve-lot subdivision. After the Zoning Board initially denied it, the Zoning Board of Appeals approved a revised plan to create the lots. The landowners appealed and the Law Court held that because the Board of Appeals had not made written findings of fact or conclusions regarding the application, the decision should be vacated and the case remanded back for a written decision.

- a. *Broader Implications:* The Commissioners must make findings on the record. They cannot simply attach their meeting minutes.



## **CONDUCTING ADMINISTRATIVE AND ADJUDICATORY HEARINGS**

### **(con't)**

3. **Administrative Procedure Act Requirements for Decisions:**  
**5 M.R.S. § 9061 (2013).**
  - a. In every adjudicatory proceeding, the agency's decision must be in writing or stated in the record, and shall include findings of fact sufficient to apprise the parties and any interested member of the public of the basis for the decision.
  - b. A copy of the decision shall be delivered or promptly mailed to each party to the proceeding or his representative of record.
  - c. The decision should include written notice of the party's rights to review or appeal the decision within the agency or review of the decision by the courts, as the case may be, and of the action required and the time within which such action must be taken in order to exercise the right of review or appeal.

## CONDUCTING ADMINISTRATIVE AND ADJUDICATORY HEARINGS (con't)

### iv. Public Meetings and Ex Parte Communications.

1. **Administrative Procedure Act: Ex Parte Communications.** 5 M.R.S. § 9055(1) (2013). In an adjudicatory proceeding, no agency members authorized to take final action or presiding officers designated by the agency to make findings of fact and conclusions of law may communicate directly or indirectly in connection with any issue of fact, law or procedure, with any party or other persons legally interested in the outcome of the proceeding, except upon notice and opportunity for all parties to participate.
  - a. Ex Parte communications may result in a decision vacated if communications result in “procedural unfairness.”
    - i. “Procedural unfairness” refers to the idea that the ex parte communication affects “the integrity of the process and the fairness of the result.” Duffy v. Town of Berwick, id. at ¶ 18.
    - ii. Fact finding proceedings where public excluded violates due process. Id.

**CONDUCTING ADMINISTRATIVE AND ADJUDICATORY HEARINGS**  
**(con't)**

**v. Records of Proceedings**

**1. Maine Administrative Procedure Act Record Requirements. [5 M.R.S. § 9059 \(2013\)](#).**

- a. The agency shall make a record consisting of:
  - i. All applications, pleadings, motions;
  - ii. Evidence considered;
  - iii. Statement of fact officially noticed;
  - iv. Offers of proof, objections;
  - v. The recommended decision.
- b. **Hearings.** All hearings must be recorded in a form “susceptible to transcription.” The agency shall transcribe the recording when necessary for the prosecution of an appeal. [5 M.R.S. § 9059\(2\) \(2013\)](#).



## CONDUCTING ADMINISTRATIVE AND ADJUDICATORY HEARINGS (con't)

- c. **Available to the public.** The agency shall make a copy of the record, including recordings made pursuant to subsection 2, available at its principal place of operation, for inspection by any person during normal business hours; [5 M.R.S. § 9059\(3\) \(2013\)](#).
- d. **Decisions.**
  - i. Everything that the agency considers in making a decision should be included in the record, including records, reports and documents in the possession of the agency, and shall be offered and made a part of the record; and
  - ii. No other factual information or evidence shall be considered in rendering a decision. [5 M.R.S. § 9059\(4\) \(2013\)](#).

**CONDUCTING ADMINISTRATIVE AND ADJUDICATORY HEARINGS**  
**(con't)**

- vi. **How not to conduct an adjudicatory proceeding:** Mutton Hill Estates, Inc. v. Town of Oakland, 468 A.2d 989, 992 (Me. 1983).

Mutton Hill Estates, Inc., sought approval to develop a twelve-lot subdivision. The Oakland Planning Board denied the permit, but failed to make findings of fact. Mutton Hill then challenged the Board's action in the Superior Court, which remanded it back to the Planning Board.

The Board met privately twice with the opponents of the project and prepared findings of fact and conclusions of law, without notifying Mutton Hill Estates. Neither meeting was recorded. The Board adopted the findings of fact and conclusions without discussion. The court held that the Board violated Mutton Hill's due process rights.

# **HOW TO RESPOND TO CLAIMS AGAINST THE COUNTY**

## **IV. How to Respond to Claims Against the County**

### **a. Service of Legal Complaint**

- i. Report the complaint promptly to the County Insurance pool or other insurer.
- ii. All reports should be oral.
- iii. Written reports should be prepared only at the direction of counsel which are protected by the attorney client privilege.



*HOW TO RESPOND TO CLAIMS AGAINST THE COUNTY*  
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b. **Do not**

- i. Sit on the matter.
- ii. E-mail fellow commissioner about your knowledge, opinion, beliefs.
- iii. Investigate matter or talk to potential witnesses.