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BOATING CONTROL COMMITTEE: Rules and Regulations - Publication of Notice of Intent to Adopt.

The boating control committee must give notice and an opportunity for hearing pursuant to Act 88, P.A. 1943, as amended, to interested persons of the regulations which the committee has proposed for adoption and such notice and hearing is in addition to the requirements of Act 245, P.A. 1959.

No. 4488

March 11, 1966.

Mr. James Hadley
Administrator
Boating Control Committee
Michigan Arcade
Lansing, Michigan

You have requested my opinion on the following question:

"In view of the special requirements [of Act 245, P.A. 1959] for prior notice of and the holding of a public hearing for local boating controls, and considering that regulations established by the committee are identical to local ordinances previously established, is the Committee bound by the requirement to 'publish or otherwise circulate notice of its intended action and afford interested persons opportunity to submit data or views orally or in writing,' as specified under Section 1a of Act No. 88, Public Acts of 1943, as amended?"

Section 1d of Act 245 of the Public Acts of 1959, as amended,¹ provides as follows:

"The governing body of any political subdivision which is experiencing boating problems on the waters within the subdivision may request that the committee hold a public hearing to inquire into the need for special local watercraft controls to alleviate the problems. The request shall be in the form of a certified resolution adopted by a majority vote of the governing body of the political subdivision concerned. Upon receipt of a certified resolution the committee shall establish a date for the public hearing in the area and the political subdivision concerned shall arrange suitable quarters for the hearing and issue public notice of the time and place of the hearing in a newspaper of general circulation in the area. The notice shall be published at least once, not less than 15 calendar days before the hearing. At the hearings the committee shall receive testimony from all interested parties on the nature of the boating problems on the waters under consideration."

Section 1e of Act 245 of the Public Acts of 1959, as amended,² provides as follows:

¹ M.S.A. Current Material § 18.1286(1d); Section 1d was amended by Act 261, P.A. 1964.

² M.S.A. Current Material § 18.1286(1e); Section 1e was amended by Act 261, P.A. 1964.

"Having held the public hearing and completed such investigations as it considers necessary, the committee shall prepare a statement of fact and any prescribed regulations for the relief of boating problems found, which shall be submitted to the governing body of the political subdivision concerned. By majority vote of its elected officials, the governing body shall advise the committee by certified resolution that it approves or disapproves the prescribed regulations. When the body disapproves the prescribed regulations, no further action thereon shall be taken. When the governing body approves the prescribed regulations, a local ordinance shall be enacted in accordance with the provisions of law pertinent to the enactment of ordinances by such governing body, which shall be identical in all respects to the regulations prescribed by the committee. A certified copy of the ordinance shall be forwarded to the committee. The regulations shall then be adopted by the committee in accordance with Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.82 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948. The governing body of a political subdivision having established such an ordinance may by subsequent majority vote of its elected officials, repeal such ordinance at any time. The committee shall be informed of such action by certified resolution.

"The sheriff shall enforce local watercraft ordinances enacted in accordance with the provisions of this act."

Act 88 of the Public Acts of 1943, as amended, and Act 197 of the Public Acts of 1952, as amended, referred to in Section 1e above govern the manner in which administrative agencies of the state shall adopt and promulgate rules and regulations within their respective spheres of jurisdiction.

In 1964 Section 1a of Act 88 of the Public Acts of 1943 was amended by Act 161³ to provide, in pertinent part, as follows with respect to publication of rules in the Administrative Code:

"* * *

"Prior to the adoption, amendment or repeal of any rule, the state agency shall publish or otherwise circulate notice of its intended action and afford interested persons opportunity to submit data or views orally or in writing."

There is no doubt that the Boating Control Committee is bound by this provision.

The notice and hearing required by Act 245, supra, are for the purpose of gathering information as to the nature of local boating problems, whereas, the notice required by Section 1a of Act 88, supra, is for the purpose of informing interested persons of the regulations which the Boating Control Committee proposes for adoption, based on such information.

Therefore, your question is answered in the affirmative.

FRANK J. KELLEY,
Attorney General.

³ M.S.A. Current Material § 3.560(7a).