

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

Bouvier's Law Dictionary defines *penal* and *penalty* as follows: "The words penal and penalty in their strict and primary sense, denote a punishment, whether corporal or pecuniary, imposed and enforced by the state for a crime or offence against its laws."

Chapter 241, P. L. 1931, as amended, dealing with juvenile offences, provides in Section 1, that no adjudication or judgment under its provisions shall be deemed to constitute a conviction for crime.

Section 4 of the same chapter, as amended, states "Unless the offense is aggravated or the child is of vicious or unruly disposition no court shall sentence or commit a child to jail, reformatory, or prison, or hold such child for the grand jury."

Section 1, Chapter 154, R. S. 1930, transferred to Section 374 of Chapter 1, P. L. 1933, recites that the State School for Boys was "established . . . for the instruction, employment and reform of juvenile offenders", and that the State School for Girls was established "for the education, employment and reform of girls". There is no indication of commitment being for the purpose of punishment.

Section 3 of Chapter 154, R. S. 1930, transferred to Section 375 of Chapter 1, P. L. 1933, states in part "the record . . . shall be that the accused was convicted of juvenile delinquency".

It is thus apparent throughout that the State Schools are set apart from prisons and jails and that commitment to them is not punishment for a crime. It is, therefore, the opinion of this department that the State School for Boys and the State School for Girls are not penal institutions.

As to the Pownal State School, there would appear to be no reason for its being considered a penal institution unless Chapter 245, P. L. 1941, amending "Power of the court in juvenile cases" so as to permit commitment of mentally defective children to Pownal were to make it a penal institution in part at least. The foregoing paragraphs would remove this possibility and it is therefore the opinion of this department that none of the institutions mentioned in your memorandum should be considered as penal institutions.

FRANK A. FARRINGTON
Deputy Attorney General
Approved

FRANK I. COWAN
Attorney General

November 3, 1942

Ralph A. Leavitt, President
Maine Maritime Academy
Castine, Maine

Dear Sir:

In your letter of October 31, 1942 you ask for an opinion as to whether the Maine Maritime Academy is a direct agency of the state, or whether it is an entirely separate corporation to which the State appropriates certain funds.

Chapter 37 of the Private and Special Laws of 1941, as amended by Chapter 102 in Section 1, sets up the Maine Maritime Academy as a "body corporate and politic, having the same rights, privileges and powers as have corporations organized under the general law,".

Section 3 of said chapter provides that "The trustees may receive in behalf of the school grants from any federal government agency and/or from any of the several states and/or from any other source". Note this is "on behalf of the school" not on behalf of the State.

Chapter 97 of the Private and Special Laws of 1941 has to do with the leasing of the Eastern State Normal School property to the Maine Maritime Academy, reciting "Any such lease shall be executed on the part of the State of Maine by the chairman of the board of normal school trustees and on the part of the Maine Maritime Academy by the chairman of its board of trustees and shall contain a provision that the lessee shall keep the buildings adequately insured against fire, shall keep them in good repair and shall deliver them up to the State of Maine at the expiration of the term of such lease in as good condition as they were at the commencement thereof." A clear cut distinction can be noted as between the State and the school.

Chapter 102, aforesaid, provides for an appropriation, but under the heading of "State Aid".

The school property, both real and personal, covered by the lease is of course property of the State, subject to the lease, but it is the opinion of this department that the Maine Maritime Academy is a separate corporation for which the State appropriates money and not a direct agency of the State.

Very truly yours,

FRANK A. FARRINGTON
Deputy Attorney General

November 10, 1942

From:

Frank A. Farrington, Deputy Attorney General

To:

Earle R. Hayes, Secretary

Employees Retirement System

With reference to your memo of November 6th, asking questions in connection with the Employees Retirement System, we render the following opinion.

1. It is the opinion of this Department that Mr. Arthur H. Whitman was not a State employee during the years he was paid by the County or Counties in which the Court sat.

2. It is the opinion of this Department that an employee separated from the State service because of having reached the age of 70 on July 1st, 1941, may not thereafter become a member of the new retirement system. A member is defined in the Act as *any employee* included in the membership of the retirement system.

Deputy Attorney General