

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

October 8, 1943

To Frank I. Cowan, Attorney General
Re: Transfers of Insane Patients

The Commissioner of Institutions has inquired as to the authority of the Legislature in 1943 to enact legislation as contained in Chapter 286, P. L. 1943, which reads as follows:

"Transfer of insane persons from out of the state institutions. The commissioner of institutional service may, upon the request of a competent authority of a state other than Maine, or of the District of Columbia, grant authorization for the transfer of an insane patient directly to a Maine state hospital, provided: that said patient has a settlement in a Maine municipality acknowledged by the municipal officers thereof; that said patient is currently confined in a recognized state institution for the care of the insane as the result of proceedings considered legal by that state; that a duly certified copy of the original commitment proceedings and a copy of the patient's case history is supplied; that if, after investigation, the commissioner of institutional service shall deem such a transfer justifiable; that all expenses incident to such a transfer be borne by the agency requesting same. When the commissioner has authorized such a transfer, the superintendent of the state hospital designated by him shall receive the patient as having been regularly committed to said hospital under the laws of this state."

The history of this legislation is that the Health and Welfare Department advocated its passage because that department apparently is paying the expense of inmates confined in insane asylums outside of the State of Maine in cases where the patients are Maine residents and apparently the Health and Welfare Department feels it would be inexpensive to care for these people in the State of Maine. It is my understanding that Assistant Attorney General LeRoy R. Folsom has written an opinion to the effect that this procedure would be entirely legal for the authorities in Maine to follow.

The right to commit an insane person comes under the exercise of the police power of the sovereign state, being founded upon the public need for the safety of the individual declared to be insane as well as the safety of others within the jurisdiction of the State. It deprives a person of certain constitutional rights, and the proceedings are required to be absolutely in accordance with the State laws in order that one shall not be deprived of his liberty as well as his right to due process of law.

Chapter 286 would seem to be a delegation of this police power by the Legislature of the State of Maine to another sovereign State,

and the question arises whether or not this is a constitutional exercise of the police powers of the State of Maine.

An examination of the digests and the reported cases does not find any case exactly in point as pertaining to the commitment of an insane person, but there are many other cases which would indicate that a State legislature could not delegate its police powers beyond the realm.

Power Cannot Be Divested.

"Police power is a governmental function, and neither the state legislature nor any inferior legislative body to which a portion of such power has been granted can alienate, surrender or abridge the right to exercise such power by any grant, contract, delegation whatsoever."

12 C.J., page 512 and cases cited.

Generally speaking, one would not hesitate to conclude that it would be an invalid delegation of police power for a state legislature to pass a law to the effect that a person convicted of a crime under the laws of another state could be transferred to a penal institution in the former state regardless of the reason therefor except in cases where the conviction in the other state amounted to a violation of the respondent's probationary sentence imposed against him in the former state.

There is another line of reasoning which invites a hazard under the provisions of Chapter 286, and that is the proceedings for commitment must provide a notice and an opportunity to be heard before the commitment is granted, and a statute authorizing commitment, but which is not so framed as to compel a hearing before judgment, and which does not guarantee to the person alleged to be insane an opportunity to be heard in defense, is invalid as conflicting with the provisions of the state and federal constitutions which forbid that any person shall be deprived of his life, liberty or property without due process of law.

14 Ruling Case Law, p. 563 and cases cited.

How is the Commissioner of Institutions here, or the Superintendent of an institution here, to know whether or not the statutes of another state, or the proceedings for commitment thereunder have been complied with so that one would know that this allegedly insane person being transferred had been properly committed?

It may be that the advocates of the law contained in Chapter 286, had in mind the doctrine of res adjudicata as applying to insane cases and the judgments thereon. but an adjudication of a person in a foreign state, meaning outside of the State of Maine for instance, can always be collaterally attacked and all those cases holding that the doctrine of res adjudicata applies where one has been adjudged insane, relate entirely to matters of property owned

by the patient and situated outside of the jurisdiction where the patient had been so adjudged.

The Attorney General does not presume to pass on the constitutionality of any law, as that, in the final analysis, is only for the courts to determine; but the Attorney General can express an opinion as to whether or not there exists in his mind such a doubt as to the constitutionality of any enacted law as would prompt him to advise any department head not to act nor exercise any authority thereunder. It is my opinion that there is such a doubt existing under the provisions of Chapter 286, and that it is recommended that the Commissioner of Institutions of the State of Maine would be justified in refusing to transfer the persons designated in that chapter.

A great deal could be written on this subject, but in conclusion it would seem to be fitting to cite the case of State v. Intoxicating Liquors, Vino Medical Company, Inc., Claimant, 121 Me. 438, cited in State v. Gauthier, 121 Me. 524, in which Judge Deasy wrote:

"Chapter 235 of the Laws of 1919, which if fully effectual would adopt as a part of the State Law, the definition contained in the subsequently enacted Volstead Act, is in its attempt to accomplish this result, unconstitutional in that it undertakes to delegate general legislative power."

Chapter 235, P. L. 1919, of the State of Maine attempted to incorporate by reference into the section thereby amended after enactments of Congress establishing a rule, test or definition of intoxicating liquors and declaring such liquors to be intoxicating within the meaning of Chapter 127 of the Revised Statutes. The Maine Supreme Court held that such legislation constituted an unlawful delegation of legislative power and an abdication by the representatives of the people of their power, privilege and duty to enact laws. The Court also cited Cooley's Constitutional Limitations, 6th Edition, page 137.

The foregoing cases of the Maine Supreme Court are not contained in the 8th Edition of Cooley's Constitutional Limitations, volume 1, chapter 5, pages 224 and 225.

It therefore does not seem to be a valid exercise of the police power of the State of Maine to delegate to the agencies of any other sovereign State the right to deprive a resident of the State of Maine of the right of liberty by simply having the agency of that other State provide a certificate reciting that the person committed had been committed in accordance with the rules or laws of that other State, and on that alone removing that person and confining him here in our institutions.

John G. Marshall
Deputy Attorney General

JGM h