

MAINE STATE LEGISLATURE

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July 12, 1944

To Harrison C. Greenleaf, Commissioner Institutional Service
From Abraham Breitbard, Deputy Attorney General
Re Bath Military & Naval Children's Home

This is with reference to your recent oral inquiry relating to the powers of the "Board of Guardians" over the person and property of a minor at the Home. §471, c. 1, P.L.1933, relating to the Home in question, is as follows:

"Guardianship of members of home. The department shall have charge of the affairs of said home. Its head shall be called the superintendent. The commissioner, or such bureau chief as he may select, and the superintendent shall act as a board of guardians of all the children who are members of said home and shall have all the power and authority granted by law to guardians."

The power and authority granted under this provision is "the power and authority granted by law to guardians". What these powers are is to be found in §3 of c. 80, R.S. 1930, as follows:

"Power over minor's person and property. R.S. c. 72, §3. Such guardian shall have the care and management of all his ward's estate, and continue in office until the ward is twenty-one years of age, unless sooner lawfully discharged; but the care of the person, and the education of the minor, shall be jointly with the father and mother, if competent, or if one has deceased, with the survivor, if competent; otherwise these duties devolve on the guardian; and in any case, the judge may decree them to him if he deems it for the welfare of the minor, until his further order."

Healey
You will notice by the first clause of this provision that the guardian is granted complete control over his ward's estate, but the clause following which provides for the care of the person and the education of the minor is jointly with the father and mother, or of the survivor provided they are competent. Otherwise the duties devolve on the guardian. By the last clause, however, the Judge of Probate in any case notwithstanding the competency of the parent, may, if the welfare of the minor demands it, decree the absolute control of the person of the minor to the guardian.

From what I have stated you will see that the powers conferred on the Board of Guardians which are only those granted by law to guardians, from my talk with you, would be very unsatisfactory to the Board since the proper discipline and education of the child while he is a "member" of the Home would demand that the Board have exclusive control of the person and education of the minor. As the

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law now stands so far as the person and education is concerned,
it is not within the exclusive control of the Board.

The statutes upon the subject will require changes which I shall be glad to discuss with you when the time comes to draft something to take care of the present defects. One thought, however, I want to leave with you now, and that is that at the time of admission to the Home the parents, or the survivor of them or the one having custody of the child or standing in the relation of a parent, shall consent to a petition and decree to be filed in the Probate Court of the county where the Home is situated and by which the sole custody and control of the person and education of the minor is given to the Board of Guardians of the Home, perhaps with additional power to discipline and restrain the minor until he shall be discharged from the Home or until the guardianship decree is terminated and the Board discharged as guardian under the decree.

Abraham Breitbard
Deputy Attorney General

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P. S. -- Your memo from the Superintendent of the Home, dated July 5, 1944, is returned herewith.

AB