

MAINE STATE LEGISLATURE

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June 7, 1946

To Francis J. McCabe, Warden
Maine State Prison

Subject: Questions Submitted on May 29, 1946.

Question. When is a guard permitted to use force in restraining an inmate?

Answer. A jailer or like prison official is vested with a certain amount of discretion with regard to the safe-keeping and security of his prisoners; and within reasonable limitations and restrictions he is permitted to inflict punishment on his prisoners, which may include closer or solitary confinement of the offender, or such punishment as may be permitted by the Maine statutes.

I want to call your attention especially to the fact that cruel or excessive punishments should not be administered, and if cruel or excessive punishment is administered by prison officials and guards, the courts by appropriate action will protect prisoners from such punishment when called to the courts' attention. Corporal punishment is not permitted under the laws of Maine.

I call your attention also to Chapter 23, Section 43, R. S. 1944:.

"If a convict sentenced to the state prison resists the authority of any officer, or refuses to obey his lawful commands, the officer shall immediately enforce obedience by the use of weapons or other effectual means; and if, in so doing, a convict thus resisting is wounded or killed by the officer and his assistants, they shall be justified."

So you see that is about as far as the statute goes in regard to the amount of force officers should use when a prisoner resists authority.

Question 2. If an inmate escapes and goes into a private home, under what circumstances may a guard pursue him?

In answer to your second question, I will say that in the cases of Cahill vs. People, 106 Ill. 621, Commonwealth vs. McGahey, 11 Gray, Mass. Reports, 194, and Allen vs. Martin, 10 N. Y. Reports 300, courts have held that where one pursued by an officer breaks away and shuts himself in his house, the officer may, to retake him, break open the outer door of the house without making known his presence or first demanding admission and receiving a refusal, if the pursuit is fresh, as the party must be aware of the officer's object.

In further answer to Question 2, I will say that an officer may without process arrest one who has escaped from his custody after a lawful arrest, whether with or without a warrant, and to that end the courts have held that it is necessary to break doors after

demanding and being refused admittance.

Question 3. What is corporal punishment?

Answer. "Corporal punishment" seems to mean any kind of corporal deprivation or suffering which is inflicted by the sentence, directly by way of penalty for the offence, and in this sense includes imprisonment. It is sometimes defined as physical punishment as distinguished from pecuniary punishment or fines. In the old days it was any kind of punishment inflicted upon the body, such as whipping or the pillory. In its enlarged meaning, corporal punishment expresses all means of punishment on or inflicted upon the body, including imprisonment. I call your attention to Chapter 23, Section 24, R. S. 1944:

"The department shall examine into all disorderly conduct among the prisoners, and when it appears to it that a convict is disorderly, refractory, or disobedient, it may order any punishment other than corporal, which it deems necessary to enforce obedience, not inconsistent with humanity, and authorized by the established rules and regulations of the prison."

Question 4. When is a guard allowed to use firearms?

Answer. I call your attention to the provisions of Section 44 of Chapter 23, R. S. 1944, which reads as follows:

"The warden shall constantly keep on hand a suitable and sufficient supply of arms and ammunition, and may require all officers and other citizens to aid him in suppressing an insurrection among the convicts in prison, and in preventing their escape or rescue therefrom, or from any other legal custody or confinement; and if, in so doing, or in arresting any convict who has escaped, they wound or kill such convict or those aiding him, they shall be justified."

This is about as far as I would want to go in answering that question, except that a guard should not use firearms to kill or maim any prisoner, unless it is to prevent an escape or rescue from prison.

Ralph W. Farris
Attorney General

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