STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

I wish to advise that in my opinion this statute does not relate to temporary commitments on an emergency basis for observation. In other words, it is my interpretation of the statute that the patient must be currently confined permanently in a recognized state hospital as a result of proceedings considered legal by the State in question; and inasmuch as that State is required by law to furnish a duly certified copy of the original commitment proceedings and a copy of the patient's case history, it is within the discretion of the Commissioner of Institutional Service whether or not a request for transfer is justifiable. If a patient has been committed on an emergency basis, it is my opinion that you would be justified in refusing the transfer of said patient.

RALPH W. FARRIS
Attorney General

February 1, 1950

To Norman U. Greenlaw, Commissioner of Institutional Service
Re: Settlement—Holden Turner

I have your memo of January 24th, stating that on November 30, 1948, your department authorized the admission of Dorothy W. Turner, wife of Holden Turner of Mount Vernon, to the Central Maine Sanatorium. You further state that the patient is approximately twenty-one years of age and that the family consists of four children ranging in age from one month to four years. Mr. Turner was born in Rome, Maine, on October 22, 1924. Patient's application states that her husband earns $20-$25 a week, working in the woods, etc., which makes it obvious that he would be unable to assume the obligation of paying for his wife's sanatorium treatment.

You further state that you have contacted the town of Mount Vernon on various occasions in an effort to have Mr. Turner's legal settlement established and have the town accept responsibility, but have been unable to get any reply by letter or telephone. Further check indicated that possibly Rome might be the place of settlement, but the chairman of the board of selectmen denies this, on the ground that "before his marriage he took his father's settlement and he was 19 years when married so at that time he became emancipated from his father and lived with his wife in Mt. Vernon so I guess it belongs to Mt. Vernon to take care of the bill."

You state that you do not interpret emancipation to mean when a man marries, nor do you figure that he literally becomes of age when he marries, but rather when he reaches the age of twenty-one and that he can then start to acquire a legal settlement in his own right, but until that acquisition is made, would have the settlement of his father, if he had one. In that case you feel that Holden Turner would, until October 22, 1950, hold the settlement in Rome which he derived from his father.

In order that you may attempt to collect from the town of settlement, you ask my opinion whether Rome or Mount Vernon is liable.

Since the law permits the marriage of minors with their parents' consent, parental rights must necessarily yield to the new obligations and rights arising from the marriage relation. When a man marries and founds a new

family he assumes new obligations and duties. When these new obligations and duties conflict with former ties, they must, in the interests of society and the family relation, be paramount. In other words, legal rights between husband and wife are superior to those between parent and child. Therefore it is my opinion that the marriage of Holden Turner emancipated him from his parents and that if he has resided in Mount Vernon since his marriage when he was 19 years of age, his legal settlement would be Mount Vernon, as that would mean that he had resided there for more than six years and had raised a family. This is a question of fact. Our court held in *Lowell v. Newport*, 66 Me. 78, that emancipation may be by marriage, death, misfortune or agreement.

RALPH W. FARRIS
Attorney General

February 2, 1950

To Raymond C. Mudge, Commissioner of Finance
Re: Board of Elevator Rules and Regulations

I have your memo of January 26th asking if the last paragraph of Section 99-K of Chapter 374, P. L. 1949, relating to the inspection of elevators, allows the Commissioner of Labor to expend in excess of the revenue dedicated to this purpose, or must this activity operate within the limits of the amounts collected as specified in this chapter?

In reply I will state that it is my opinion that it was the intent of the legislature that the expenses incurred under the provisions of this section should be paid from the revenue derived from fees, as the legislature appropriated all fees for this purpose.

RALPH W. FARRIS
Attorney General

February 3, 1950

To Harland A. Ladd, Commissioner of Education
Re: Liability in case of school accident

I have your memo of February 2nd relating to liability in case of school accident.

I gave a memo to H. V. Gilson, then Commissioner, on October 16, 1946, on the liability of teachers and school board members in case of death or injury of pupils. If you have not a copy of that memo in your file, I will furnish one from this office.

I call your attention to the case of *Brooks vs. Jacobs*, 139 Maine 371, decided April 2, 1943, in which the Court held that the relationship of teachers to their pupils is in the nature of *in loco parentis*, as the teacher is the substitute of the parent. Therefore if a pupil is injured in school and the teacher is negligent in securing emergency treatment, causing further injury or death to the pupil, that teacher might be held liable, depending on the circumstances of the case.

In the case of an emergency where the pupil is injured and the teacher calls a hospital and has the pupil taken there, the parents of the child are