

MAINE STATE LEGISLATURE

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Yes

January 28, 1952

To Honorable Frederick G. Payne, Governor of Maine
Re: Inspection of Children's Homes

With reference to the memo of Joseph A. P. Flynn, Director, State Fire Prevention, dated January 10, 1952, and papers attached thereto, the following is offered:-

Section 243, Chapter 22, Revised Statutes of 1944, as amended, provides that persons maintaining a boarding house or home for children under 16 years of age must obtain a license therefor from the Department of Health and Welfare. A prerequisite for obtaining the license is that such persons must present to the department a written statement from the designated municipal officer or the Insurance Department to the effect that the building and premises comply with the requirements of law.

Mr. Flynn states that the plan whereby municipal officers were to make these necessary inspections turned out to be entirely ineffective, and arrangements were made whereby the Insurance Department was to make such inspections, the Department of Health and Welfare agreeing to reimburse the Insurance Department for expenses incurred in making the inspections.

However, in 1949, Ralph W. Farris, then Attorney General, rendered an opinion relative to the reimbursements by the Department of Health and Welfare to the Insurance Department for the expenses incurred in carrying out the inspections, stating that such reimbursements could not be properly made, and directed the Controller to transfer back to the Department of Health and Welfare all moneys paid to the Insurance Department.

The basis of this opinion was Section 29 of Chapter 25, R.S. 1944, which section provides:

" . . . Every fire insurance company or association which does business or collects premiums or assessments in the state shall pay to the insurance department on the 1st day of May, annually, in addition to the taxes now imposed by law to be paid by such companies or associations, 1/2 of 1% of the gross direct premiums for fire risks written in the state during the preceding calendar year. . . Said funds shall be used solely to defray the expenses incurred by the insurance commissioner in administering all fire preventive and investigative laws, rules and regulations. . ."

At the present time the Insurance Department is unable to keep abreast of the necessary inspections with regard to child boarding-homes, because of insufficient funds and personnel, and it has again

asked if it may accept funds from the Department of Health and Welfare in order that the Insurance Department may employ two additional inspectors to carry out these inspections.

The answer must be, No.

The amendment to Section 243, Chapter 22, R. S. 1944, is a law designed to prevent a duplication of the Auburn baby-farm fire and in effect will tend to do just that. The inspections contemplated by this section are of such a nature that they should not be neglected. The section provides:

". . . The insurance commissioner shall, if requested, "direct such inspections to be made. . .

It must be assumed that it is the intention of the legislature that laws enacted by them be put into effect.

It is, then, mandatory, a duty to be performed by the Insurance Department if alternative inspections are not made and inspections are requested of them.

As stated above, Section 29 of Chapter 85, R. S. 1944, provides a fund to be used solely to defray the expenses incurred by the Insurance Commissioner in administering all fire preventive and investigative laws, rules and regulations.

Without a doubt, inspection by the Insurance Department under the provisions of Section 243, Chapter 22, is embraced by the phrase, "all fire preventive and investigative laws, rules and regulations," in Section 29, Chapter 85.

The legislature has, in effect, by enacting Section 29 of Chapter 85, appropriated a sum of money to be used for a particular purpose, just as money is appropriated by that body for the functioning of the other departments and units of our State government. If that sum is insufficient, it is not contemplated that one department borrow from another; but it is presumed that action will be taken to secure additional funds from the proper source.

Alexander A. LaFleur
Attorney General

jgf/c