

# MAINE STATE LEGISLATURE

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November 19, 1952

Governor - Elect Burton M. Cross, State House, Augusta, Maine.

Re: Bath Military and Naval Childrens' Home

This office has been asked if the State Maine could discontinue the Bath Military and Naval Children's Home without too much difficulty or if there are existing trusts or other factors which would make such action inadvisable.

This Children's Home was organized as a body politic and corporate in the year 1866 by Chapter 163 of the Private and Special Laws of that year.

By virtue of Chapter 254 of the Public Laws of 1929 this Home was declared to be a State institution and all trust funds of that institution were paid over to the Treasurer of the State of Maine for the purposes for which they were intended.

Sections 174 and 175 of Chapter 23 of the Revised Statutes of 1944 declare the Home to be a State institution and provide that the Commission of Institutional Service 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.

As of the latest date of summarizing the amounts of trusts held by the State, the Military and Naval Children's Home had two separate trusts, and as of June 30, 1942 these amounted to \$17,577.94. As stated in the Report on the Trust Funds of the State of Maine prepared by Frank Cowan these funds had no known conditions attached, save that they were for the benefit of the Military and Naval Children's Home. The book referred to contains excerpts from the instruments giving origin to these trusts whenever it was possible to find the instruments. Inquiry at the office of the Treasurer of State reveals that he does not have possession of the trust instruments relative to this Home.

If the trust instruments contained no conditions, then the funds would in effect be gifts. However, if the trust instruments did contain limitations, restrictions or reservations, we have a precedent in the State of Maine in the case of Bancroft vs. The Maine State Sanatorium Association, which would provide that upon failure of the purpose for which the trust was created, then a resulting trust would be created in favor of the estate of the donor. This would not in any

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way prevent the State's discontinuing the use of the Home, but would mean that funds traceable to these trust instruments should be kept intact pending the claims of heirs of the original donors until such time as the original instruments could be found and a determination made as to whether or not restrictions were contained in the instruments.

This office does not believe that the existence of trust funds is an insurmountable obstacle to the discontinuance of the Home. If in fact such trust funds could be construed as gifts, as mentioned above, these funds could be transferred under the theory similar to the cy pres doctrine used by courts; but this office, as a result of conversations had with parties interested in this Home, would consider the problem more fully before taking any action in this direction.

There is, of course, involved the guardianship of all the inmates of the institution. Presently, the Commissioner and the Superintendent have been granted all the power and authority granted by law to guardians, and the only fair answer would be, upon discontinuing the Home, to see that reliable guardians were appointed for all children.

Another point involved, which is not mentioned in this letter, this office will be pleased to discuss with the Governor-elect at his pleasure.

James Glynn Frost  
Deputy Attorney General

jgf/c

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N. B. Memo and attached papers. Commissioner of Institutional Service to Mr. Cross, returned with this memo.