STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1951 - 1954

September 17, 1954

To Albert S. Noyes, Bank Commissioner
Re: New York Thruway Bonds

You have asked this office whether or not "New York Thruway" bonds, guaranteed unconditionally as to principal and interest by the State of New York, could be construed to be legal investments for savings banks under the provisions of the first phrase in subsection II of Section 38 of Chapter 55, R. S. 1944, which reads as follows:

> "In the bonds or other interest-bearing obligations of any state in the United States,".

William S. Webber, Vice President of the investment firm of Coffin & Burr, supplied this office with a prospectus of the bonds in question for our consideration and aid in answering the question propounded.

While we cannot, of course, give an opinion to the effect that all necessary steps have been taken in the State of New York with respect to the Thruway bonds, we are of the opinion that such bonds would not be improper investments under the above quoted section of our law, in the event all conditions precedent to the issuance of such bonds have been complied with.

JAMES GLYNN FROST
Deputy Attorney General

September 22, 1954

To Elmer Ingraham, Chief Warden, Inland Fisheries and Game
Re: Hopkins Pond; Chapter 126, Resolves of 1953

Senator Lloyd Dunham called at the office yesterday making an inquiry relative to the above mentioned Resolve.

It appears that your department has taken the position that the effect of this Resolve is to open only that part of Hopkins Pond which lies in the Town of Clifton and the County of Penobscot.

We feel that as a matter of law the purpose of the Resolve was to open the entire pond to ice fishing irrespective of whether it fell in Hancock or Penobscot County. We feel that the word, "in the town of Clifton, County of Penobscot," were merely descriptive of the general area in which Hopkins Pond was located, rather than being words of limitation.

I trust that you will be able to amend your rule and regulation relative to this pond . . . to be in accordance with this opinion.

ROGER A. PUTNAM
Assistant Attorney General

October 4, 1954

To Honorable Roswell P. Bates
Re: Blood Tests on Minors

. . . You inquire relative to the law concerning the right of a doctor to do a blood test on a minor who is held by a police department.

Ordinarily, the liability of a doctor is predicated on his failure to exercise reasonable skill and care in performing his services. However, a physician may be answerable under some circumstances where he is free from personal negligence, as where he cares for a person beyond the scope of the consent capable of being given.

It has been held that the withdrawing of blood for transfusion purposes is such an act as requires consent. While we can find no law with respect to the rights of a doctor to take a blood test on a minor, it is our opinion that you should take the precaution of obtaining the father's consent before doing such a test.

JAMES GLYNN FROST
Deputy Attorney General

October 5, 1954

To Norman U. Greenlaw, Commissioner of Institutional Service
Re: Gerald T. Strout, Central Maine Sanatorium

The facts appear to be as follows: One Strout was admitted to CMS on September 10, 1953. After that date, a determination was made by your department that those legally liable for his support were unable to pay. On February 11, 1954, the department wrote to the Town of Milo relative to legal settlement. The Town accepted the charge from February 11, 1954 to date of discharge, but refused to accept the charge from the date of admission to the date of notice of request to assume liability under the provisions of Section 167 of Chapter 23 of the Revised Statutes of 1944.

The question presented deals with the right of the State to charge back to the municipality the cost from the date of admission to the date of notice, the liability from the date of notice having been accepted.

It is the opinion of this office that the date of notice to the municipality under Section 167 of Chapter 23, R. S. 1944, fixes the date of liability upon the municipality.

The statute referred to fixes the duty on your department to ascertain the ability of those legally liable to pay support for patients. It then provides that if inability is shown, then liability upon the municipality may be fixed at $2. per week. The statute appears to us to set forth this mode of procedure as a condition precedent to attaching secondary liability.

We would suggest, however, that immediate notice on admission, to municipality, may be in order. The municipality would then perhaps furnish the department with information relative to the capacity of those legally liable to pay. Ability to pay is always a question of fact which must be ascertained as a given time with reference to an existing situation. The giving of immediate notice will also do away with any period of time between admission and the ultimate determination of inability to pay.

ROGER A. PUTNAM
Assistant Attorney General