

# MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT  
OF THE  
ATTORNEY GENERAL

for the calendar years  
1955 - 1956

Barney Shur, Corporation Counsel for the City of Portland, reports that inasmuch as the sirens are the property of the State, he does not feel that the City would have a legal right to enter into such an agreement.

With respect to this latter statement, while title to the property is in fact in the State, nevertheless the signature of the Portland City Manager on the project application subjects the City to the same compliance as the State with all applicable federal Civil Defense administrative regulations covering contributions of Civil Defense equipment, and quite likely their responsibilities are much the same.

It would appear to us that points 1 and 3 above, which call for the repair of damage to the Temple caused by the installation and maintenance of the siren and for holding the Temple harmless for any damage to the siren, would be necessarily incidental to the responsibility of the State and the City, and the Temple is justified in asking for such consideration.

It is our opinion that expenditure for such purposes would be appropriated out of the funds available for the installation of the equipment, or operational fund.

With respect to item 2, wherein the Temple desires an agreement whereby it will be held harmless for indemnification for any possible liability for injuries to personal property, we would refer you to Section 11 of Chapter 12 of the Revised Statutes of 1954, as amended. We feel that Section 11 was enacted by the legislature in consideration of just such a situation as is here presented. Section 11 reads as follows:

“Neither the State nor any political subdivision thereof, nor other agencies, nor, except in cases of willful misconduct, the agents, employees or representatives of any of them, engaged in any civil defense activities, while complying with or attempting to comply with the provisions of this chapter or any other rule or regulation promulgated pursuant to the provisions of this chapter, shall be liable for the death of or any injury to persons, or damage to property, as a result of such activity. . .”

This office is of the opinion that the Temple is, for the purpose of the installation of air raid equipment, an agent of the State and the City of Portland, and is immune under Section 11 from liability for the death of or any injury to persons, or damage to property, as a result of the installation or maintenance of such equipment, except in the case of wilful misconduct.

It would also appear to us that, upon being informed of the existence of this statute, the Temple would no longer require the save-harmless agreement.

JAMES GLYNN FROST  
Deputy Attorney General

November 7, 1955

To Francis H. Sleeper, M. D., Superintendent, Augusta State Hospital

Re: Commitment

We have your inquiry regarding a commitment from the Probate Court in and for the County of Cumberland. It appears to your satisfaction that one of

the physicians signing the certificate and testifying was not, at the time of the signing and at the time of the giving of testimony, a physician duly licensed in this State.

The pertinent section of the statute is Section 113 of Chapter 27 of the Revised Statutes of 1954, which is as follows:

“No person shall be declared insane or sent to any institution for the insane by municipal officers or by a judge of probate, or by any other person or persons constituting a board of examiners charged with authority to inquire into the condition of a person alleged to be insane, unless the person alleged to be insane shall first have been examined by 2 reputable physicians, each of whom shall have been a duly licensed and practicing physician in this state, who shall be appointed by said municipal officers or by the probate judge, or by any examining board before whom proceedings are held, and neither of whom, or of said members, shall be related to the person alleged to be insane or related to the person or persons making complaint, and such physicians shall have certified that the person examined is in fact insane.”

You will note that this section says in effect that no person may be adjudged insane unless two reputable physicians, duly licensed and practising in this State have certified and testified, etc. This would be a condition precedent to the court's accepting jurisdiction of the case.

This patient would, in our opinion, not be legally committed if the doctor were not duly licensed. The Law Court has been extremely strict in such matters, as the cases of *Kittery v. Dixon*, 96 Me. 368, and *Naples v. Raymond*, 72 Me. 213, indicate. We could not recover for his care under this commitment.

You quoted to us Section 131 of Chapter 27, R. S. 1954, which of course allows you to proceed to challenge the legality of this commitment in the Augusta Municipal Court and have a new and legal commitment. You may follow this procedure or discharge the patient, as the situation warrants.

ROGER A. PUTNAM  
Assistant Attorney General

December 14, 1955

To Kermit Nickerson, Deputy Commissioner of Education

Re: Meetings of State Board of Education

We have your memo requesting an interpretation of Chapter 41, Section 3, which section reads in part as follows:

“Meetings of the board shall be held quarterly in the offices of the department on call of the chairman of the board or the commissioner on 5 days' written notice to the members; and if both the chairman and commissioner shall be absent, or refuse to call a meeting, any 3 members of the board may call a meeting by similar notices in writing.”

With respect to the above quoted section of law you ask the following two questions:

“1. Is the policy of holding monthly meetings legal and in compliance with the statute?”