

# MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1955 - 1956

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?"

"2. Is the Board empowered to hold special meetings on call of the chairman or commissioner?"

Confirming an oral opinion given by the Attorney General a short time ago, we would answer your questions in the following manner:

1. Your policy of holding monthly meetings is legal. We would, however, advise that you comply with that portion of Section 3 which calls for quarterly meetings in the office of the department, such meetings being, in our opinion, mandatory, and being the minimum compliance with the statute.

2. The Board is empowered to hold special meetings on the call of the chairman or the Commissioner. We would suggest that in such instances the 5 days' notice in writing be given.

JAMES GLYNN FROST  
Deputy Attorney General

December 15, 1955

To Honorable Edmund S. Muskie, Governor of Maine

Re: Creation of a Committee by the Governor

We have your request for an opinion as to your right to appoint a committee to inquire into the price differential of gasoline and fuel oil between the State of Maine and other States, more particularly Maine and Massachusetts.

We are assuming that, implicit in the above question, are the further questions of the right to reimburse the members of such committee for services rendered and the right to create a committee that would have some authority, that is to exercise a portion of the sovereignty, or in some respect represent the sovereign State of Maine.

We are of the opinion that you are without authority to create such a committee.

The Governor of the State of Maine is an executive officer, and his authority is limited by the Constitution and statutes of the State.

We have been unable to find either constitutional or statutory provision authorizing you to appoint such an officer.

Without such express authority, then the act of creating the office would be an infringement upon the powers of the Legislature, which body alone has the right to determine whether or not the establishment of such an office is necessary, its duties, powers and duration.

In the case of *State v. Butler*, 105 Me. 91, the Legislature by Act had authorized the Governor to create the office of special attorney for any county, the office to continue during the pleasure of the Governor.

The Court held that the Act was unconstitutional because it authorized the Governor to create the office, whereas the creation of a public office is a legislative power, and such cannot be delegated.

FRANK F. HARDING  
Attorney General