

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

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March 10, 1959

To: Peter W. Bowman, M.D., Superintendent, Pineland Hospital & Training Center

Re: Commitment of Pineland patients to Augusta & Bangor State Hospitals

We have your memo of February 24, 1959, in which you inquire when the legal proceedings for the commitment of patients from Pineland Hospital and Training Center to Augusta State Hospital and Bangor State Hospital may be commenced in the Cumberland County Probate Court. You state that presently you start such proceedings in the county of settlement.

It appears that the statute, Chapter 27, Section 110, R. S. 1954, permits an alternative, where the person resides or is found. We are of the opinion that an inmate of your hospital, for the purposes of legal proceedings for commitment to either Augusta State Hospital or Bangor State Hospital, is for such purpose found in Cumberland, with the result that commitment proceedings may be instituted before the Judge of Probate of Cumberland County.

JAMES GLYNN FROST
Deputy Attorney General

(In Re: Cash 40 N.E. 2d, 312, 313, 314)

March 11, 1959

To: Major General E. W. Heywood, Adjutant General

Re: "Dispute Clause" in Contracts executed by the State

In response to an oral request by Major Pynchon, we offer the following with respect to the desire that the "dispute clause" be included in contracts executed by the State. We assume that by "dispute clause" is meant arbitration.

It is the opinion of this office that the provision submitting disputes to arbitration is an improper provision for the State to agree to.

Generally speaking, everyone who is capable of making a disposition of his property or a release of his right, may make a submission to arbitration, but no one can who is either under a natural or civil incapacity of contracting. The basis for determining that municipalities can submit controversies to the decision of arbitrators is the fact that they have corporate capacity to sue and be sued and, consequently, to submit their controversies to arbitration.

With respect to a State, however, which has an immunity from suit by virtue of constitutional provision, there remains a substantial question as to the right of the State officials to submit a controversy to arbitration. The immunity from suit, which is an immunity peculiar to States and the Federal Government, prevails until such time as the State, in our case, grants the right to sue. This right, of course, must come from the legislature.

An agreement to arbitrate, which at least impliedly includes an agreement to abide by the arbitration decision, is probably an evasion of the im-