STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

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-

munity from suit. By accepting such arbitration decision, the parties to the contract may be undertaking a responsibility that the legislature would have refused to undertake. For these reasons, we are of the opinion that it is improper for the State of Maine to submit disputes to arbitration.

JAMES GLYNN FROST
Deputy Attorney General

March 24, 1959

To: Niran C. Bates, Director of Bureau of Public Improvements

Re: Deeds — With Respect to Sale of Land by the State

We are in receipt of your memo of February 13, 1959 addressed to all Departments and Institutions, which memo contains instructions to be followed by all state departments and institutions with respect to the manner in which deeds which evidence the sale of land by the state should be handled.

We must advise that in our opinion your instruction would impress upon a state employee a most unusual and improper responsibility. Your memo reads in part as follows:

"In establishing Records of the State's ownership in Land it has become apparent that certain procedures should be followed when a parcel is *sold* so that there will be continuous records of all transactions.

"The description in the deed should be as complete as possible. It should contain adequate references to the State's title in the parcels involved including the data as to recording in the Registry of Deeds.

"Arrangements should be made with the *Grantee* so that upon receipt of payment, the original deed would be forwarded to the proper County Registry by the department handling the transaction. The Register of Deeds should be instructed to record it and return it to the *Grantor*. The department will then write on the copy the date of record, the book and page reference as they appear on the certificate of the registry.

"The original should then be delivered to the Grantee, and the copy filed with the State Forest Commissioner, except for Highway Deeds."

We would point out that the deed to which you refer is the muniment of title belonging to the grantee. It is his property. The State, as grantor should not attempt to so control an instrument that belongs to another person. There is no law that requires the recording of a deed, and the grantee may have good reason for delaying the filing of such an instrument.

For the reasons stated, we believe your instructions violate the rights of one who is entitled by law to the possession of that instrument which is evidence of his title, and also places an undue responsibility upon a state employee with respect to the property of another person.

We are of the further opinion that a plain copy of the deed properly filed in the office of the Forest Commissioner, with perhaps another copy or abstract in your office, is all that is needed for the sake of state records.

FRANK E. HANCOCK
Attorney General