

MAINE STATE LEGISLATURE

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January 5, 1960

Kernit Nickerson, Deputy Comm.

Education

George A. Nathan, Assistant

Attorney General

Vocational Rehabilitation

I have your request for an opinion regarding an alleged conflict between Section 195-A, Chapter 41, and Section 195-E, Chapter 41, as enacted by Chapter 286, Public Laws of 1959.

Section 195-A states:

" . . . Subject to the approval of the State Board of Education, the executive officer of the state board shall make such rules and regulations as he finds necessary or appropriate to efficient administration of a program of vocational rehabilitation, shall enter into agreements with local state and federal agencies providing services relating to vocational rehabilitation, . . ."

The executive officer of the board refers to the Commissioner of Education, Section 5, Chapter 41, Revised Statutes of 1954.

Section 195-E sets out the powers and duties of the Vocational Rehabilitation Division with the proviso that such powers and duties are subject to the approval of the state board. Sub-section I, Section 195-E, states that the director may prescribe regulations (1) governing the protection of records and confidential information; (2) the manner of filing applications; (3) eligibility and other working or administrative procedures.

It appears from reading the two sections that there is no conflict in the laws but a division of the authority to make rules and regulations. It seems that the language in Section 195-A contains a broad grant of rule making power to the Commissioner subject to the approval of the board and many of the steps he is authorized to take in this field are necessarily antecedent to any valid rule or regulation being promulgated by the director. The director's rule making power is limited to those areas specifically set out in Section 195-E and subject to the approval of the state board. It is my opinion that if the Commissioner promulgated

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a rule or regulation covering any area that the director has authority to regulate, the general regulation by the Commissioner would preempt the director from promulgating a regulation in this area.

However, based on the departmental organization, it would be presumed that most of the rules and regulations would be a cooperative venture with complete agreement between the commissioner and the director. In any event, the Board of Education must approve all rules and regulations before they become valid.

**George A. Wathen
Assistant Attorney General**

gaw/n