STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

feasibility of appealing the case to the United States Supreme Court without determining whether or not the suit was of the nature that made it eligible for review by that Court. It was concluded that the merits of the case were such that the chance of reversing the decision of our Maine Court was so remote as to be practically nonexistent. For that reason, the Public Utilities Commission issued its decree in conformity with the Court decision.

With respect to the *right* of the Public Utilities Commission to appeal the case to the United States Supreme Court, there is at this time some question. Appeals or certiorari to the Supreme Court of the United States are generally provided for when the aggrieved party has been deprived of some substantial right accorded to him by a provision of the United States Constitution or by a treaty or by Federal statute. Thus, it is usually said that "there must be a substantial Constitutional question" before review of a State Court decision will be made by the United States Supreme Court.

At this point no such Federal Constitutional question by which the State has been deprived of a legal right, title, or interest by virtue of the decision of our Maine Court, can be seen. The Maine Court decision was a broad one avowedly giving full consideration to "the public interest" in having passenger service maintained, and found, as against the damage that would be done to the Railroad by requiring such continued service, that the public interest would be better served if the passenger service were discontinued.

Frank E. Hancock, the Attorney General, is familiar with the contents of this memo and you are advised that if you believe further study of the problem is desirable, we will be happy to cooperate. At the present time, however, we could not recommend pursuing the case further.

We are enclosing a mimeographed copy of our Court's decision for your file.

JAMES GLYNN FROST
Deputy Attorney General

August 26, 1960

To: Ober C. Vaughn, Director of Personnel

Re: Military Leave of Absence — State Personnel

We have your request for a determination of the status of a Highway Department employee who entered military service in 1948 and who, without break, has remained in the service since. It appears that such person entered service as an officer and has continued such service without further re-enlistment.

Your question is as to whether such person is still on leave of absence under the provisions of Chapter 63, section 28, Revised Statutes of 1954.

In our opinion, such person is still on a leave of absence. The pertinent portions of section 28, above cited, read as follows:

> "Whenever any employee, regularly employed for a period of at least 6 months by the state or by any department, bureau, com-

mission or office thereof, or by any county, municipality, township or school district within the state, and who has attained permanent status in such employment, shall in time of war, contemplated war, emergency or limited emergency enlist, enroll, be called or ordered, or be drafted in the military or naval service of the United States or any branch or unit thereof, or shall be regularly drafted under federal manpower regulations, he shall not be deemed or held to have thereby resigned from or abandoned his said employment, nor shall he be removable therefrom during the period of his service, but the duties of his said employment shall, if there is no other person authorized by law to perform the powers and duties of such employee during said period, be performed by a substitute who shall be appointed for the interim by the same authority who appointed such employee if such authority shall deem the employment of such substitute necessary."

. . . . . .

"The provisions of this section shall apply to any such employee entering the armed forces of the United States under the provisions of Public Law 759, 80th Congress (Selective Service Act of 1948) or while said Public Law 759, or any amendment thereto or extension thereof shall be in effect."

"No credits toward retirement under the State Retirement System, nor vacation or sick leave accumulation shall be allowed beyond the period of first enlistment or induction in said armed forces of the United States unless the individual involved is required to remain in or return to military service beyond the first period of service under some mandatory provision."

According to the records of your department, Mr. was granted a leave of absence on February 4, 1942 on account of military duty. Mr. returned to his duties in the Highway Department on August 18, 1947.

After having received several subsequent leaves for short periods to perform military duties, Mr. entered the military service in 1948 and, as above indicated, still remains in that service with the Selective Service.

The last paragraph of section 28, above quoted, was enacted by Chapter 25, Public Laws of 1957. The counterpart of this law in the Retirement Chapter was similarly amended by Chapter 26, Public Laws of 1957.

While it is clear that Mr. is not entitled to any retirement, vacation, or sick leave credit, under the recent amendments referred to as the result of his present tour of duty, it being subsequent to his first period of service (and absent a law which *compelled* him to re-enter military service and which *compelled* him to remain—if there is such a law Mr. has the burden of drawing same to our attention), we believe he is still on a leave of absence and therefore entitled to whatever benefits might be available under our laws to such a person, other than those specifically denied him under the 1957 law.

Mr. will continue, under our present law, to be on leave of absence as long as the Selective Service Act of 1948 (now known as

Universal Military Training and Service Act) continues in effect; the exclusion in the 1957 law not having included leaves of absence.

JAMES GLYNN FROST
Deputy Attorney General

August 26, 1960

Peter Bowman, M. D.
Superintendent
Pineland Hospital and Training Center
Pownal, Maine

Dear Dr. Bowman:

We have your memo in which you ask if the word "may" as it appears in Chapter 152-A, Section 6, of the Revised Statutes of 1954 as enacted by Chapter 342, Public Laws of 1959, is permissive or mandatory, your basic question being whether you should accept for commitment a juvenile sent to you by a juvenile court when the papers accompanying the juvenile do not reveal that he has been examined by a qualified psychiatrist.

The said Section 6 of Chapter 152-A reads as follows:

> "Mentally retarded and mentally ill juveniles. If, in any proceeding before a juvenile court, the court has cause to believe that the juvenile is mentally retarded, or mentally ill, the court may require such juvenile to be examined by any qualified psychiatrist and the result of said examination shall be reported to the court for its guidance.
>
> "The expenses of any examination authorized by this section shall be paid by the county in which the juvenile court ordering such examination is sitting."

Another section that should be read in conjunction with Section 6 is Section 17, subsection IV, paragraph G of Chapter 152-A, which section deals with the power of a juvenile court to dispose of juvenile cases. Among several specifically enumerated kinds of disposition of juvenile cases, the juvenile court may:

> "Commit, in its discretion, to an appropriate treatment center provided that the court has received a report, as provided in section 6, that the juvenile is mentally retarded or mentally ill;"

Thus, while it is discretionary in the court to initially require examination of the juvenile by a qualified psychiatrist, it is our opinion that such court is powerless to commit the juvenile to the Pineland Hospital and Training Center *unless* the juvenile was so examined by a psychiatrist. The examination is jurisdictional and must be complied with before a juvenile court has jurisdiction to commit to a treatment center.

The commitment papers should indicate that such examination was made.

Your question, however, as revealed by conversation with Dr. Sidwell, actually concerns commitment papers which conform to the use under a law now repealed, which provided that a municipal court could commit