

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

January 30, 1963

To: Dean Fisher, M. D., Commissioner of Health & Welfare
Attn: Owen Pollard, Director, Division of Eye Care and Special
Services

Re: Education of Legally Blind Children

Replying to your inquiry relative to certain phases of education of legally blind children dated November 29, 1962 and which reached our desk on January 2, 1963, we submit the following opinion:

Question 1. Can the department exercise its discretion in determining whether or not a legally blind child shall or shall not attend Perkins Institution or other residential school?

According to section 319 of chapter 25, Revised Statutes, the department *may*, upon the request of the parents or guardian, send such blind children as it may deem fit subjects for education to Perkins Institution or other school considered by the department to be qualified to provide suitable education for the blind child. Our interpretation of this statute is that the parents or guardian may request the department to educate a blind child, whereupon the department will determine whether such child is a fit subject for education. If found educable, then the department *may* provide the necessary education either at Perkins Institution or at any other school deemed suitable by the department. In other words, we feel that the parents cannot specify the particular school to which their child shall be sent. The decision as to the proper school for the child is made by the department. Furthermore, we must point out that it is not mandatory upon the department to honor all such requests for the education of blind children. The word "may" is used, thus allowing the department discretion in selecting candidates for such education, although a restriction is added in the statute as follows: "In the exercise of the discretionary power conferred by this section, no distinction shall be made on account of the wealth or poverty of the parents or guardians of such children."

Question 2. Can the department withdraw a student already enrolled on the basis that in their opinion the child's needs can best be met through other resources?

The statute is very specific in providing that "no such pupil shall be withdrawn from such institution except with the consent of the proper authorities thereof or of the governor . . ." Unless the school authorities consent to the withdrawal, your only recourse would be to ask for the Governor's consent to withdraw the specific child.

Question 3. What is the department's responsibility to the child, parents of a child, concerning complaints of activities within such an institution that would if founded on fact jeopardize the physical and moral well-being of the child?

In your example you have indicated the possibility of sexual abuse of a child by a faculty member. We also understand that you have brought this complaint to the attention of the director of the institution who has done nothing to either prove or disprove the allegations. Since this involves a serious criminal offense, it would seem that the department has the responsi-

bility of reporting same to the proper law enforcement officials in order that an investigation may be made.

RUTH L. CROWLEY
and
FRANK W. DAVIS
Assistant Attorneys General

January 31, 1963

To: Edward L. Allen, Ph. G., Secretary
Commission of Pharmacy
8 Harlow Street
Bangor, Maine

Dear Mr. Allen:

Since talking with you, I have studied again the wording of Section 14 of your law, and have discussed its meaning with the Attorney General.

It would appear that the words "who supply medicines to their bona fide patients" are not descriptive of the words "hospitals and sanitariums." If we consider hospitals who *do not* supply medicines, it is readily seen that such hospitals would not have pharmacies and the above quoted phrase would be meaningless unless it intended to restrict hospitals to supplying medicines only to bona fide patients.

It is, therefore, the opinion of the Attorney General that a hospital may not supply prescription drugs to its employees without complying with paragraph 1 of section 14. The hospital, in addition, would have to comply with the Unfair Sales Act, Revised Statutes, Chapter 184, section 1.

Sincerely yours,

LEON V. WALKER, JR.
Assistant Attorney General

February 7, 1963

To: Maynard F. Marsh, Chief Warden, Fish & Game

Re: Trespass on Lakes and Ponds

1. In your memo of January 3rd, you ask whether filling in with gravel along the shores of inland lakes is legal. The letter from your supervisor refers to Long Lake, but I will broaden this opinion to include all lakes and ponds.

2. Great ponds are natural ponds exceeding 10 acres in area. Marginal owners on these ponds own only to natural low water mark. Long Lake is such a pond. Below low water mark, the state owns the bed of the pond. Any filling in below low water mark is a trespass against the state.

3. Mill ponds, artificial ponds, and ponds of less than 10 acres are privately owned.

4. Remedies against trespassers are several, and vary considerably in severity. It is suggested that a conference be held with the Attorney General to determine as a matter of policy which remedy should be used.

LEON V. WALKER, JR.
Assistant Attorney General