

# MAINE STATE LEGISLATURE

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February 3, 1964

Dean Fisher, M. D., Commissioner

Health and Welfare

George C. West, Deputy

Attorney General

**Responsibility for Prosecution in Cases of Fraud in the Public  
Assistance Programs**

**FACTS:**

There is some confusion in the Department of Health and Welfare concerning the responsibility for prosecuting, either civilly or criminally, cases of fraud which may occur in the public assistance programs.

The Division of Family Services has prepared a procedural manual for use of employees within the division. It is necessary to implement this manual by understanding the areas of responsibility of the Attorney General's office and the various County Attorneys.

**QUESTION NO. 1:**

What are the areas of responsibility of the Attorney General's office and the County Attorney for preparing a case for prosecution after the Division of Family Services has concluded that fraudulent intent was present?

**ANSWER NO. 1:**

See Reasons, below, for answer.

**REASONS:**

The answer to this question does not depend on the interpretation of any statutes or decisions of any courts. It is a matter of practicality and cooperation between three agencies, namely, the Department of Health and Welfare, the Attorney General's office and the County Attorney.

When potential fraud cases come to the attention of the department, the worker will have the first contact with the involved recipient. The procedure of the worker is outlined in the manual. The problem seems to arise at the place on page 4 of chapter III (Rev. 2/1/64) where the Welfare Resources Unit assumes responsibility for the referral. The answer to the apparent problem is one of procedure and cooperation between the Director of the Welfare Resources Unit and the Assistant Attorney General having jurisdiction of the case.

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(In order to answer the question clearly, I must presume to suggest some procedure at this point. I do this realizing that I am encroaching upon your administrative prerogatives.)

The Director of the Welfare Resources Unit should immediately forward the referral to the Assistant Attorney General having jurisdiction of the case. The Assistant should review the material and determine what evidence is needed for prosecution. He should then transmit the referral and his written statement listing the necessary evidence to the Director of Welfare Resources. The Director will obtain all necessary evidence and return it with the referral to the Assistant. The Director should list, separately, any unobtainable evidence and the reasons it is unobtainable.

If the Assistant believes there is sufficient evidence for criminal action, he forwards the material or consults with the County Attorney. The County Attorney then decides if the evidence will support a criminal charge. The County Attorney may want some additional evidence. This he obtains through the Sheriff or State Police or he may ask that the department obtain it. The County Attorney handles the case in court. He may ask the Assistant to aid him or he may not. That is the decision of the County Attorney.

If the Assistant believes that the evidence is not sufficient for criminal prosecution, he may bring a civil action. He may also bring such an action if the County Attorney refuses criminal prosecution.

Hence, the conclusion could be stated that the Assistant (1) reviews referral to determine additional evidence necessary; (2) refers case to County Attorney if he believes evidence will support criminal prosecution; (3) assists County Attorney if requested; or (4) prosecutes civil action on behalf of the State.

The County Attorney (1) reviews evidence to determine if he will prosecute, criminally; (2) determines need for additional evidence; and (3) prosecutes case.

QUESTION NO. 2:

Is a County Attorney required to follow the procedure set forth in the Maine Public Assistance Procedural Manual?

ANSWER NO. 2:

No.

**REASONS:**

It must be borne in mind that the County Attorney is the Prosecuting official for the County. He is responsible for the diligent investigation and prosecution of all complaints of violations of criminal statutes which come to his attention. His duty is a statutory one.

The Department of Health and Welfare is charged, by statute, with giving financial assistance to persons in need. The statutes also provide that certain acts by recipients of assistance or by persons abetting recipients are criminal acts. Certain acts by recipients may result in loss of assistance. Some acts may not be criminal in nature but may allow the Department to recover assistance payments by civil action.

In order for the Department, through its large and scattered field staff, to have some uniformity in procedure it is necessary to set up methods of determining improper acts by recipients or others. Also, it is proper to set up procedures for reporting such acts to the central or state office. However, it must be understood that this is solely a matter of procedure within the department. It is binding only on the employees of the department.

No official, state, county or municipal, involved in enforcement of the law is bound by procedures set up by a department for use of its employee. Conversely, no department may set up procedures for investigating or reporting alleged criminal acts that are binding on law enforcement officials.

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