

MAINE STATE LEGISLATURE

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STATE OF MAINE

INTER-DEPARTMENTAL MEMORANDUM

Date April 9, 1966

To Mr. A. Cook, Chief, Bureau of Elementary
Education and Supervision

Re: Elementary

From Mr. Donald D. Parry, Asst. Atty. General

Re: Attorney General

Subject Eligibility of Schools Within the Department of Mental Health and Corrections
for Assistance Under Title III of the NEHA.

FACTS:

The Department of Education is trying to establish eligibility for schools under the jurisdiction of other State agencies under Title III, NEHA of 1958, P.L. 854 (85th Congress), which provides Federal financial assistance for mathematics, science, and modern foreign language instruction.

In the preparation of a possible revision of the Maine State Plan to include such schools, it is necessary to know whether the following schools are included in the public elementary and secondary school system of the State:

1. Governor Arthur State School for the Deaf
2. School at Portland Hospital and Training Center
3. Boys' Training Center
4. Women's Training Center
5. School at Maine State Prison

QUESTION:

Are the above schools under Maine law included within the public elementary or secondary school system?

ANSWER:

No.

OPINION:

Fortunate Federal Regulations adopted under Title III, NEHA, §§301-306, P.L. 854 (85th Congress) are as follows:

Title 43 cfr. §141.1 (c) Elementary School

"Elementary School" means a school which provides elementary education, as determined under State law, as part of the public elementary school system of the State."

Article 42 c.c. §141.2 (a) as amended

"Elementary School" means a school which provides elementary education, as determined under State law, or, if such school is not in any State, as determined by the Commissioner, except that the term does not include any education provided beyond grade 12. Such term may include a public junior college, as determined under State law, or, if such school is not in any State, as determined by the Commissioner."

Chapter 41 of the Revised Statutes contains the law relating to education and school system of the State.

Section 135 thereof provides in part as follows:

"For the purpose of §108 and §§ 235-241, the following terms are defined:

The term 'elementary school' shall be understood to include that part of the school organization of a town in which is offered a program of studies providing that offered by an approved secondary school as defined by §95.

The term 'secondary school' shall be understood to include that part of the school organization of a town offering a program of studies as included in secondary schools or any part thereof as defined by §95 and as arranged for by the establishment and maintenance of a free high school, a union high school or by contract with the superintending school committee of an adjoining town or with the trustees of an academy within the town or in an adjoining town as provided for by §105."

An examination of Chapter 41 indicates that inevitably public elementary and secondary schools are operated by, and within, political subdivisions of this State, as superintending school districts.

The quoted portion of Chapter 41, §237-2, set forth below indicates that the Legislature classified the Flushing Hospital and Training Center and the Governer Foster State School for the Deaf as special schools, withdrawn from the public school system:

"The commissioner may approve the attendance of handicapped or exceptional children at special schools such as the Governer Foster State School for the Deaf, Flushing Hospital and Training Center and Bedford Institute for the Blind in Haverhill, Massachusetts, or at such other schools or institutions as he may designate. . . ."

Further indication as to the exclusion of the Governer Foster State School for the Deaf from the public school system is found in Revised Statutes of Maine 1934, Chapter 27, §142, which reads in part as follows:

"Every parent, guardian or other person having control of any legally sound child between 6 and 18 years of age, is bound to be suitably benefited by the methods of instruction he uses in

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the public schools, unless it can be shown that the child is receiving regular instruction during the same period in studies usually taught in the public schools, shall be required to send such child or youth to the Governor Baxter State School for the Deaf during the scholastic year of that school....."

Revised Statutes of Maine 1954, c. 27, §5, as amended, with reference to the Department of Mental Health and Corrections provided in part as follows:

"... It shall also establish such rules and regulations for the instruction and employment of the patients and inmates of the various institutions having due regard to their age, sex, strength and disposition for the purpose of securing their improvement and future welfare. . . ."

Revised Statutes of Maine 1954, c. 152-A, §27, with reference to the Boye Training Center and the Stevens Training Center provided in part as follows:

"The State shall establish and maintain training centers to rehabilitate children committed thereto as juvenile offenders by the courts of the State. Toward this end, the disciplines of education, counseling, group work, psychology, psychiatry, medicine, nursing, vocational training and religion related to human relations and personality development shall be employed"

Revised Statutes of Maine 1954, c. 27, §19, with reference to the Maine State Prison provided in part as follows:

"The state prison at Hallowell, in the county of Kennebec, shall continue to be maintained as the prison and penitentiary of the State, in which convicts, lawfully committed thereto, shall be confined, employed and governed as provided by law. . . ."

Through an examination of the last three cited Statutes it is seen that, the Training Centers are created for the purpose of rehabilitating juvenile offenders, and the Prison for the purpose of confinement of persons convicted of crime.

The schools existing within the three institutions are merely a part of the greater correctional program, and the Department of Mental Health and Corrections is the sole authority for prescription of rules and regulations relating to instruction offered at the institutions.

We are, therefore, drawn to the conclusion that the schools in question are not a part of the public elementary or secondary school systems of the State, and are, therefore, not properly included in the "State Plan" for the purposes of Title VII of the National Defense Education Act.

Courland D. Perry
Assistant Attorney General