

MAINE STATE LEGISLATURE

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April 10, 1964

TO Betta Fisher, M. D., Commissioner
FROM Frank W. Davis, Assistant Attorney General
SUBJECT Definition: Maine Institution for the Blind - Public or Private Institution?

FACTS:

The Department of Health and Welfare, in the past, followed the law that stated that the Maine Institution for the Blind, Portland, Maine, was a public institution, and therefore its inmates would not be eligible for public assistance, in the form of grants of Aid to the Blind.

Recently questions have been raised by a private corporation allied in purpose with the Maine Institution for the Blind regarding the actual legal status of the latter charitable corporation. On March 20, 1964 the Department of Health and Welfare was notified by letter that the Maine Institution for the Blind was not a state agency and the Attorney General's Department could not give opinions to private corporations.

On March 25, 1964 the Commissioner of the Department of Health and Welfare requested a formal opinion on the legal status of the Maine Institution for the Blind in order to determine whether grants in Aid to the Blind could be given to individuals entering or attending the Maine Institution for the Blind.

QUESTION:

Is the Maine Institution for the Blind a public or private institution?

ANSWER:

The Maine Institution for the Blind is a private corporation and therefore a private institution.

OPINION:

Maine Institution for the Blind was duly incorporated June 20, 1905 under Revised Statutes of Maine 1903, Chapter 57, Charitable Societies. Its purposes were as follows:

"to establish, maintain and operate an institution for the instruction of the blind and to provide a home for them during such period of instruction; to acquire, hold and convey real and personal property necessary or incidental to said purpose and to possess all the privileges, rights, powers and immunities conferred on educational institutions by Chapter 57 of the Revised Statutes."

That under Resolves of Maine, 1917, Chapter 52, which granted sums of money to Maine Institution for the Blind for the years 1917 and 1918, it also directed the following:

"That in the case of the Maine Institution for the Blind, the board of directors shall be so organized as to provide for not less than 6 nor more than 10 directors, $\frac{1}{2}$ of whom shall be appointed by the governor with the advice and consent of the council for overlapping terms. Such appointment shall be non-partisan."

That under Resolves of Maine 1919 Chapter 113 reads:

"Resolve, Providing for the Care, Support and Medical or Surgical Treatment of Dependent Persons in or by Certain Charitable and Benevolent Institutions and Organizations not Owned or Controlled by the State . . ."

Under this Resolve Maine Institution for the Blind received grants for the years 1919 and 1920.

That under the Private and Special Laws of Maine, 1923, Chapter 84, the Maine Legislature changed the purposes of the Maine Institution for the Blind as follows:

"to establish, maintain and operate an institution for the instruction of the blind and to provide a home for them during such period of instruction and for such longer periods as may be deemed necessary by the directors of said institutions to acquire, hold and convey real and personal property necessary or incidental to said purposes and to possess all the privileges, rights, powers and immunities conferred on educational institutions by Chapter 52 of the Revised Statutes, and all amendments thereof."

That under the Private and Special Laws of Maine, 1923, Chapter 96 made the following changes:

Chapter 96, Page 531 and 532

(An Act to Change the Board of Directors of the Maine Institution for the Blind)

Sec. 1. Board of Directors to consist of 11 persons; now appointed; state Superintendent of Schools to be a director.

The board of directors of the Maine Institution for the Blind shall consist of 11 persons, six of whom shall be appointed by the governor with the advice and consent of the council, of which number the state superintendent of schools shall be one. The remaining 5 shall be by election of said institution as now provided in its by-laws.

Sec. 2. Terms of directors.

The term of the state superintendent of schools as a director of the Maine Institution for the Blind shall be co-existent with his term as such superintendent, the remaining five appointed by the governor as aforesaid shall be for the overlapping terms as now held.

Sec. 3. Authorized to change by-laws; majority of directors must be appointed by governor or state aid forfeited.

The Maine Institution for the Blind may change its by-laws to cover this change in the law and a majority in number of directors appointed by the governor shall be a condition precedent to the money aid extended by the state.

Sec. 4. Inconsistent Statutes Repealed.

All acts or parts of acts and resolves inconsistent with this act are hereby repealed.

Approved April 4, 1923.

That under Revised Statutes of Maine 1954, Chapter 53, General Provisions, Section 2 reads as follows:

"Acts of incorporation may be altered or repealed, Revised Statutes, Chapter 51, Section 2.
Acts of incorporation passed since March 17, 1831, may be amended, altered, or repealed by the legislature, as if express provision therefor were made in them, unless they contain an express limitation; but this section shall not deprive the courts of any power which they have at common law over a corporation or its officers. G. L. Sec. 6, Subsec. XVIII; (16 Maine 231) (23 Maine 319) (60 Maine 174) (63 Maine 274) (66 Maine 504, 508) (69 Maine 49) (96 Maine 258) (97 Maine 287 & 592) (109 Maine 432) (124 Maine 64)

That under Revised Statutes of Maine, 1944:

- (a) Shows Chapter 22 set up a new Department of Health and Welfare under the following general citations: 1931 Chapter 216, Article I, Subsections 1, 2, 3, 4; Article III, Section 1, 1933, Chapter 1, Section 1, 1937, Chapter 221, 1939, Chapter 223 Section 8; Chapter 299. This changed the handling of all blind matters from the Governor and Council, and Cities and Towns, to the new State Department of Health and Welfare.
- (b) Under Aid to the Blind: Section 276 Requisites for Aid reads:
Subsection IV: "Is not an inmate of any public institution."
- (c) Section 277 Services for the Blind reads:
"The department shall provide, or cooperate with other public agencies in providing a program of services for the blind, including . . ."

The Federal Social Security Act as Amended Title X Grants to States for Aid to the Blind shows the following:

Section 1001: States basically it is to enable each State to furnish financial assistance, rehabilitation and other services to needy individuals who are blind, and which States have submitted and had approved by the Federal Government State plans for the blind.

Section 1002: Defines State Plans for the Blind and Subsection 12 says "effective July 1, 1955, provide, if the plan includes payments to individuals in private or public institutions for the establishment or designation of a State authority or authorities which shall be responsible for the establishing and maintaining standards for such institutions.

Section 1102: Sets out the right for the Federal Government to set up and publish rules and regulations not inconsistent with this Act.

Under the Federal Rules and Regulations Section 3521.1 defines "Public Institution" as:

"... an institution that provides shelter, custody, or care, and that is the responsibility of a governmental unit, or over which a governmental unit exercises administrative control. Such factors as governmental participation in financial support of the institution, as well as in policy formulation, or in the application of policy to specific situations may, under certain circumstances, be evidence of administrative control."

Federal Rules Section 3530 and Section 3531 spell out Requirement and Criteria for State Plans in Aid to the Blind, etc. for providing assistance to persons in institutions as follows:

Subsection (1) These criteria must cover all factors particular to the existing situation that indicate whether there is public control of any aspect of the administration as a result of public financial support. . .

A leading text defines "Public Institutions" as:

"those which are created by law or public authority, while "private institutions" are those which are created or established by private individuals for their own private purposes. Some public benefits or rights may result from the private individuals

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or associations. So, also, some private or individual rights may arise from public institutions. The only sensible distinction between public and private institutions is to be found in the authority by which and the purpose for which they are created and exist . . . (1 Ohio St. 623, 643) Words & Phrases V. 35.

These facts therefore reveal:

1. That under the purposes of incorporation, the Maine Institution for the Blind is a private corporation.
2. That appointment of a majority of its directors without further direction or control by the State of Maine and/or the State Department of Health and Welfare does not place the Maine Institution for the Blind within the classification and definition of so-called "Public Institutions", as said Directors may control and operate the Maine Institution for the Blind as they deem advisable.
3. That the Maine Institution for the Blind under the Federal Social Security Act and Federal Rules and Regulations is not administratively controlled by any Federal or State governmental unit.



Assistant Attorney General

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