

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date October 7, 1965

To Walter F. Ulmer, Commissioner Dept. Mental Health and Corrections

From Courtland D. Perry, Assistant Attorney Gen'l. Dept. Same

Subject Application of Departmental Statutes Relating to Improper Conduct of Officers

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You have asked this office in what instances and in what manner Title 34, M.R.S.A. 1964, §§ 6, 552, 593 are applicable, and whether such sections are inconsistent with, or repugnant to, Title 5, M.R.S.A. 1964, §678, and Personnel Rules promulgated thereunder.

It is the opinion of this office that T. 34, §6 is applicable only to improper conduct imputed to "officers", meaning superintendents, assistant or deputy superintendents of all institutions under the control of the department, and to all officers and subordinate officers, including guards etc., at the Maine State Prison, but not to employees i.e., those persons holding positions of less responsibility than the foregoing. Proceedings under T. 34, §6 may take place in order to determine the truth of the imputations of improper conduct on the part of any of the above officers, pursuant to which proceedings the department may take disciplinary action against such officers, as provided in T. 5, §678, and pertinent Personnel Rules.

Any officer with respect to whom proceedings are conducted under T. 34, §6, and disciplinary action taken under T. 5, §678 may request an investigation by the Personnel Board under T. 5, §678.

In short, T. 34, §6 merely establishes procedures through which the department may determine whether disciplinary action against such officers is in order.

Title 34, §§ 552, 593 set forth specific disciplinary action which may be taken against officers and subordinate officers of the Maine State Prison, and the truth of the accusations of neglected duty etc., under these sections may be determined by proceedings conducted pursuant to T. 34, §6, however, such proceedings are not a prerequisite to the imposition of the sanctions set forth in T. 34, §§ 552, 593.

In every instance of disciplinary action taken under T. 34, §§ 552, 593 the officer or subordinate officer may request an investigation by the Personnel Board under T. 5, §678, and the pertinent Personnel Rules.

In summary, Title 34, §6, relates to proceedings to determine whether an officer is guilty of improper conduct or the neglect of duty. Title 34, §§ 552, 593 set forth specific disciplinary action which might be taken by the department. Title 5, §678 and the pertinent Personnel Rules come into play after proceedings under T. 34, §6, and disciplinary action under T. 34, §§ 552, 593, and may come into play in any such case.

Walter F Ulmer, Commissioner

October 7, 1965

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It should be noted that:

the disciplinary action set forth in T. 34, §§ 552, 593 are not exclusive; other appropriate disciplinary action may be taken against such officers and subordinate officers pursuant to T. 5, §678

And that:

the procedures set forth in T. 34, §6 are permissive and not mandatory, and are merely available in the event that the department feels that through such procedures the truth of imputed misconduct, or neglect of duty, can be best ascertained.



Courtland D. Perry  
Assistant Attorney General

CDF/f