

MAINE STATE LEGISLATURE

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STATE OF MAINE

yes

Inter-Departmental Memorandum Date July 18, 1966

To Earle B. Perkins, Ph.D., Superintendent Dept. Military and Naval Children's Home

From Courtland D. Perry, Assistant Atty. Gen'l. Dept. Mental Health and Corrections

Subject Guardianship Authority of the Superintendent of the Military and Naval Children's Home and Commissioner of Mental Health and Corrections

FACTS:

Children residing at the Military and Naval Children's Home may fall into several categories--those committed thereto by Order of Court, those placed in the home by the Department of Health and Welfare after commitment, those placed in the home by the Superintendent of either juvenile training center on entrustment, and those children merely admitted to the home without the previous action of any Court depriving parents of custody and control of such children.

Regarding the guardianship authority of the Superintendent of the Military and Naval Children's Home and the Commissioner of Mental Health and Corrections over children residing as members of such home T., 34, M.R.S.A., 1964, §2952 provides:

"The Department of Mental Health and Corrections shall have charge of the affairs of said home. Its head shall be called the superintendent. The commissioner and the superintendent shall act as a board of guardians of all the children who are members of said home and shall have all the power and authority granted by law to guardians."

QUESTION:

Must the guardianship authority of the Superintendent and Commissioner be construed to have a limited application as to children, members of the Military and Naval Children's Home, who are not committed directly to the home by Order of Court?

ANSWER:

Yes

OPINION:

It is the opinion of this office that T., 34, M.R.S.A., 1964, §2952 must be given strict construction in the determination of the scope of the guardianship authority of the Superintendent of the Military and Naval Children's Home and Commissioner of Mental Health and Corrections over all categories of children residing in such home, except those children committed directly to the home as a result of a divorce action under T., 19, M.R.S.A., 1964, §752, or committed thereto after adjudication of neglect under T., 22, M.R.S.A., 1964, §3792.

In the following categories parental or guardianship authority takes precedence over the authority of the joint guardianship created by T., 34, M.R.S.A., 1964, §2952 as indicated: The parent or parents of a child merely placed in the Military and Naval

Children's Home without previous Court action depriving such parents of custody and control of the child retain authority of such child under T., 19, M.R.S.A., 1964, §§211, 213,

§211 "The father and mother are the joint natural guardians of their minor children and are jointly entitled to the care, custody, control, services and earnings of such children. Neither parent has any rights paramount to the rights of the other with reference to any matter affecting such children."

§213 "If one of the parents of a minor child is dead or has abandoned such child, all parental rights respecting such child shall devolve upon the other parent."

In the event that both parents are deceased and a legal guardian of the person and estate of a child places such child in the Military and Naval Children's Home, the Court appointed guardian remains vested with authority over the child during residence in such home.

The Department of Health and Welfare acquires custody and guardianship authority over children committed to such department under T., 22, M.R.S.A., 1964, §§3792, 3793 and must be said to retain such authority despite placement in the Military and Naval Children's Home. There is no provision for departmental delegation of its guardianship authority, thus acquired. Similarly, the Superintendent of either juvenile training center must be said to retain guardianship authority vested in him or her by virtue of commitment to such institution, despite placement on entrustment in the Military and Naval Children's Home under T., 15, M.R.S.A., 1964, §2716.

In the latter four categories it is our opinion that the guardianship authority of the Superintendent of the Military and Naval Children's Home and the Commissioner of Mental Health and Corrections is subject to the direction or approval of either the parents, or the individual, or the agency vested with guardianship authority by the Court, except to the limited extent of day to day supervision, guidance and discipline of such children resident in such home.

As an illustration, it is our opinion, that the Superintendent and Commissioner would be without authority to decline to discharge a child to the parental home upon request of the parents, in a case wherein the child was merely placed in the Military and Naval Children's Home by the parents, despite undesirable conditions in the parental home.

Title 34, M.R.S.A., 1964, §2952 requires joint action of the Superintendent and Commissioner, which in practice is unrealistic and should be changed.

The Statute should, in our opinion, either be amended to provide for commitment to the Military and Naval Children's Home with resultant actual guardianship powers of person and estate vested in the Superintendent in every case, or the Statute should be amended to provide that the Superintendent serve in a custodial capacity having authority of direct supervision, guidance and discipline of children in the home, in

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instances where parental or guardianship authority remains vested in other persons or agencies, the Superintendent in such instances, except for supervision, guidance and discipline being subject to the approval of the parents, individual or agency vested with parental or guardianship authority. Under the second alternative statutes should provide for the Superintendent's guardianship authority in instances of direct commitment to the home.

Courtland D. Perry
Assistant Attorney General

CDP/f

Copy to: Walter F. Ulmer, Commissioner