

# MAINE STATE LEGISLATURE

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October 27, 1967

SUPPLEMENTARY MEMORANDUM

Re: Coordination of Higher Education  
(University of Maine)

1. Whether the University of Maine is an instrumentality and agency of the State of Maine?

The Maine Revised Statutes Annotated, Title 20, M.R.S.A.

§ 2252 provides as follows:

"The University of Maine is declared to be an instrumentality and agency of the State for the purpose for which it was established and for which it has been managed and maintained under Chapter 532 of the Private and Special Laws of 1865 and supplementary legislation relating thereto."

This provision was added in 1945 by Chapter 98 of the Public Laws of 1945. The provision was added subsequent to the decision of the State of Maine Supreme Judicial Court in the case of Orono v. Sigma Alpha Epsilon Society, (1909), 105 Me. 214.

In the Orono case the defendant claimed that the University of Maine was a branch of the State Government, an instrumentality of the State itself and that therefore its property was public property.

"The necessary facts, however, are lacking here. The University of Maine, while chartered by the State and fostered by it especially in recent years, is not

a branch of the State's educational system nor an agency nor an instrumentality of the State, but a corporation, a legal entity wholly separate and apart from the State. The defendant seeks to class it as a State Institution in the same sense as are the public schools or the normal schools, but such is not its legal status." (Emphasis supplied)

The Attorney General subsequent to the passage of Chapter 98 of the Public Laws of 1945 ruled, on April 30, 1945, that the University of Maine was not a "department" of the State of Maine.

The Attorney General noted that the Legislature had declared the University of Maine to be an "agency" of the State for the purpose for which it was established and for which it has been managed and maintained under the provisions of Chapter 532 of the Private and Special Laws of 1865.

He pointed out that Chapter 532 of the Private and Special Laws of 1865 established the State College of Agriculture and Mechanic Arts as a body politic and corporate and that thereafter the name of the organization was changed to the University of Maine by Chapter 551 of the Private and Special Laws of 1897.

He noted further that the corporate existence of the University of Maine was in full force and effect when Chapter 98 was enacted and that the enactment of Chapter 98 was for the purpose of removing the uncertainty which had existed for several years as to whether or not the University of Maine was an agency of the State, so that the Federal Government, in

providing funds for various purposes, would not raise a question as to Federal funds to which the University might be entitled by the various acts of Congress.

He concluded that the University was not a "department" within the meaning of provisions concerning the Maine State Employees Retirement System.

This opinion was confirmed by the opinion of the Attorney General dated March 23, 1946 and again on December 29, 1964, when the Attorney General's Office had occasion to rule on the status of the University of Maine.

That opinion (December 29, 1964) stated, concerning the question of whether the University of Maine was an agency of the State of Maine for milk pricing purposes, that:

"In answering this opinion, it is not enough to determine whether the University is an agency of the State; but it is necessary to determine the further question; Whether the University (or agency) is a state-owned and operated institution? The words "state agency" and "state-owned and operated institution" are not synonymous. According to the decision in *Orono v. Sigma Alpha Epsilon Society*, the University was not a state-owned and operated institution; and the enactment of Revised Statutes, Chapter 41 § 131 (Chapter 98 of the Private and Special Laws of 1945) does not change that holding."

It does appear that the University of Maine is an agency of the State insofar as it is an institution carrying out functions of a sovereign. In short, it is providing a University system for the State of Maine. But, it is not the State of Maine; it is not a department of the State of Maine, nor is it controlled by the State of Maine. It still has a corporate existence separate and apart from the State of Maine. It is an agency for educational purposes only.

One could not properly conclude that it was sufficiently a part of the sovereign to allow the sovereign by its Legislature to change its charter, <sup>unless that power was specifically reserved</sup> or provisions of trusts relating to it, or to dissolve it altogether. Nor could monies held in trust for a state college be paid over to the University of Maine on the theory that it was equally a state institution. (See discussion re state colleges, infra.)

2. Whether the State Colleges, formerly the state normal schools, are entities separate and apart from the State of Maine or a part thereof?

The case of *Orono v. Sigma Alpha Epsilon Society*, supra, again furnishes a definition of the legal status of the state colleges, formerly normal schools:

"The State maintains at the present time four normal schools, one each at Farmington, Castine, Gorham and Presque Isle. This system originated in 1863

when a public act was passed providing for the appointment of commissioners to establish two normal schools. . . . In this way, the State itself took on a new form of public service and the educational system thus adopted became in fact an instrumentality of the State. No corporation was created, no separate entity was brought into existence, but the State simply put its own beneficent hand in a new direction, and title to the property was taken in the name of the State. . . . In the revision of 1871, the normal school system took its place along side the common school and free high school system. . . . In 1873, these schools were placed under the direction of a board of trustees, the Governor and superintendent of schools to be members ex officio, and the others to be appointed by the Governor and Council. In 1878 the Gorham Normal School was established, Public Laws of 1878, Chapter 44, and in 1903 the Normal School at Presque Isle, Private and Special Laws 1903, Chapter 223. . . . " (Emphasis supplied)

The Court went on to state the difference between the normal schools and the University of Maine in the following language:

"The difference between the relation of normal schools and of the University of Maine to the State is paralleled in the difference between the various so-called public or general hospitals of the State, and the two hospitals for the insane. The former are doing a necessary and charitable work and are recipients of the bounty of the State, but the latter alone represent the State itself in its sovereign capacity along charitable lines. The former are apart from the State, the latter are a part of the State. Actions at law would lie against the former as against any other corporation, but not against the latter as no suit lies against the sovereign power." *Orono v. Sigma Alpha Epsilon Society*, supra.

A. Legal Incidents of the particular State Colleges.

1. Gorham State College.

Gorham State College, formerly Gorham Normal School, was created by the Public Laws of 1878, Chapter 44. That chapter provided that the normal school would be located at Gorham provided and upon condition that there be conveyed to the State by the proper authorities, for use and purpose of such school, land and buildings thereon, situated in said Town.

The Private and Special Laws of Maine, 1878, Chapter 89 authorized the trustees of the Gorham Seminary to transfer the property of that corporation, consisting in part of real property to the Gorham Normal School.

The conveyance which is found in the Cumberland County Registry of Deeds, Book 455, pages 55-59, inclusive, provides that the conveyance is by the Town of Gorham (Gorham Seminary) to the State of Maine.

The deed provides for a reversion if the grantee, State of Maine, ceases to use the property conveyed by the deed for the purposes of Gorham Normal School according to the provisions of Public Laws of 1878, Chapter 44.

The property of Gorham State College, therefore, is held in the name of the State of Maine but for the purpose of use by Gorham Normal School. It is noted that there have been many subsequent conveyances of land for the purpose of use by Gorham Normal School or Gorham College, but that title has been taken by the State of Maine.

It is our understanding that there are only four trust funds currently in existence concerning Gorham State College. The first fund is the Nora P. Nason Scholarship Fund; the principal of this trust is \$4,000.

Under the provisions of the trust, certain monies were left to "Gorham Teachers College" the income from which was to be used for a scholarship to be administered by the trustees of the college.

The State Board of Education has approved the bequest and apparently the bequest has been accepted in the name of the State of Maine in behalf of Gorham State College.

Annie M. Bacon, by her will dated December 9, 1957, left the residue and remainder of her estate to "Gorham State Teachers College" to be placed in and to become a part of the permanent fund of said college, the income of which was to be used annually for the purposes of said college.



Gertrude L. Stone by her will dated June 19, 1952 left \$3,000 for a "Scholarship Fund for the Gorham State Teachers College". The proceeds are to be used to provide a \$100 annual scholarship for such a deserving student at "said college" as President of the said college may select each year to receive the scholarship.

Nellie M. Howarth by her will dated March 16, 1957 left monies for the purpose of maintaining a scholarship fund for a deserving girl studying to be a teacher at "Gorham State Teachers College in Gorham, Maine."

It is noted that in each of the trust funds concerning Gorham State College that the gift has been made specifically to the College; it has been accepted by the State Board of Education and presumably by the Governor's Council on behalf of the State of Maine. The gift has been limited in each case to the use of the school. In some cases, it has been limited to the purposes of the school.

The legislation which created Gorham Normal School (P. L. 1878, c. 44) is short and brief. It provides:

"That there is hereby established another normal school, upon such plan as the Board of Trustees of normal schools may direct."

The legislation provides for physical location, acquisition of property, and authorizes the trustees to procure teachers and put the school into operation.

The current provisions concerning teachers colleges which are found in Title 20, § 2301, et seq. are almost the same as those provisions contained in the Revised Statutes of Maine of 1883. Gorham Normal School is referred to in the Revised Statutes of 1883 at Chapter 11, § 107.

Chapter 44 of the Public Laws of 1878 was repealed by a repealing act contained in the Revised Statutes of 1883 at page 999 therein.

Therefore, the legislation concerning Gorham State College is contained within the bounds of Chapter 305 of Title 20 M.R.S.A. It will be seen hereinafter that the same statement is one concerning the other state colleges.

2. Aroostook State College.

Aroostook State College was created by the Private and Special Laws of 1903, Chapter 223.

Aroostook State College acquired title to the land upon which the institution is constructed by a deed from the St. John's Diocesan School, recorded in the Aroostook County Registry of Deeds, Southern Division, Volume 192, page 324,

in the name of the State of Maine. According to Chapter 224 the title to the land and buildings was to be forever vested in the State of Maine for the use and purposes of establishing a state normal school.

This Act was repealed by the repealing act contained in the Revised Statutes of 1904 at page 1018 therein.

It appears that Aroostook State College has no endowments or trust funds but that it is possessed of two student loan funds; the San Lorenzo Merriman Memorial Fund and a student loan fund in the amount of \$755.97 to which various groups and organizations have contributed. The purpose of this fund is to provide small temporary loans during the college year to students who need such help for a few days. No detail is available at this time concerning these funds.

3. Washington State College.

The Washington State College was created by the Public Laws of 1909, chapter 44. This provision was repealed by the repealing act contained in the Revised Statutes of 1916, at page 1642.

Washington State College has three trust funds:

Frances A. Allen by her will left monies to "Washington State Teachers College"; the income from which is to be used to provide scholarships for students from Washington County.

The will also contains the following interesting and important provision:

"If the college shall at any time cease to exist, the income may be used to assist deserving students from Washington County at any other college in the State of Maine where students receive training in the teaching profession." (Emphasis supplied)

This provision would prevent a lapse of the bequest in the event of merger, incorporation or dissolution.

Gladys L. Allen, by her will, created a fund at Washington State College to be known as the Hugh R. Drisko Fund. This fund is limited in use to students at "Washington State (Teachers) College". Washington State College is also possessed of the Amy Pinkham Scholarship Fund. Further detail of this is not available at this time.

4. Fort Kent State College.

Fort Kent State College was originally the Madawaska Training School which was created by the Public Laws of 1887, Chapter 82. This provision was repealed by the Revised Statutes of 1903 in the repealing act contained at page 1015. By the Public Laws of 1959, Chapter 375, the name of Madawaska Training School was changed to Fort Kent State Teachers College.

It is indicated that there are no trust funds or endowments held by Fort Kent State College.

5. Farmington State College.

The last state college, Farmington State College, has its beginning in an act of the Legislature contained in the Public Laws of 1863, Chapter 210, which authorized the establishment of normal schools. Pursuant to this authorization, the legislature, by Public Laws of 1865, Chapter 499, granted the trustees of Farmington Academy authority to obtain a loan of money sufficient to complete the building recently erected by them for a normal school in the Town of Farmington.

The original provision concerning the establishment of state normal schools which included Farmington was repealed by the repealing act contained in the Revised Statutes of Maine of 1871 at page 936.

There is a sizable sum of money in dollar amount which has been left to the use of Farmington State College by gift or devise.

The language of all those gifts is not now available for scrutiny, but an examination of such provisions of those instruments as is contained in Report on Trust Funds of the State of Maine, Cowan, 1931-1932 is some indication of their tenor. One would gather from review of such of the instruments as are reproduced therein and in most cases funds have been left as to "the Farmington State Normal School." Presumably these funds have been treated as have the funds in other state colleges.

One might properly conclude from a review of the above that although a bequest to a state normal school, state teachers college or state college was technically to the State of Maine, by the use of the language which appears on most of the dispositions, the use has been limited to that particular institution. Such limitations it would seem would preclude the use of the funds, without judicial determination, by the institution other than to whom they were directed.

It might be said that the state colleges are as much a part of the State as is the Department of Education or the Executive Department. They are entities in the sense that they have a separate function and purpose and are among many parts that make up the whole of the state.

It could be argued that a gift for example, a gift in trust to Gorham State College is in fact a gift to the State of Maine. Even if this argument were successful it would seem that it would be limited to the extent that while the gift might technically be to a part or division of the State of Maine, its use would be limited by the extent of the purposes of that particular part. The State, for example, would not have free and unfettered use of such a gift, but could only use it as that entity would use it. This conclusion would seem to be true whether the gift were limited specifically to the purposes as encompassed in the College or if it were limited to the college itself. It would seem implicit in a limitation of a gift to "Gorham State College" that there was an intention on the part of the donor or testator that a gift might

be used only for the purposes of that institution.

Therefore, although an argument might be made to this extent, it would seem more prudent to view the college as an entity for the purpose of the gift or bequest. It would not seem prudent to take a contrary view without a judicial determination of the question.

It is asserted that recommendations in our previous memorandum with respect to merger at the schools be followed so as to preclude any problems in this area. Particular reference is made to the difficulties which would be created by legislation authorizing a complete absorption and merger of the state colleges.

3. What is the effect of a merger on incorporation upon the retirement benefits of personnel employed by the state colleges?

The question has been raised as to the effect of a merger or incorporation upon the retirement benefits of personnel employed by the state colleges if they are merged into the University of the State of Maine. L. D. 1258 § 4-D, which was presented to the 103rd Legislature contained language which provided for an optional plan for employment benefit to personnel.

Under this provision, personnel employed at state colleges would have the option of continuing their membership in the Maine State Employees Retirement System or becoming members in the retirement system in effect at the University of (the State of)

Maine. Employees who elected to continue membership in the Maine State Employees Retirement System were to indicate their election on or before a date certain.

The University had the responsibility under this draft of providing for payment to the treasurer of the State of Maine of the amount that would have been the state's contribution to the Retirement System of such an employee. As to employees who elected to become members of the Retirement System in effect at the University of Maine, the Treasurer of the State of Maine was to pay into the fund of the Retirement System of the University for each such employee his proper portion of the funds allocable to him under the State Retirement System. Too, such employees were to similarly have the option within a limited period of time, of determining whether they were to keep their personnel classifications, salary level and tenure rights for their work with their present institutions or to adopt such benefits as they exist under the system in effect at the University at the time the election is made.

The only foreseeable legal problem in this area at this area at this time is that which would arise as a result of the payment of monies over by the State Treasurer into the retirement system of the University of Maine. L. D. 1258 provides in this respect: ". . . the Treasurer of State shall . . . cause to be paid into the retirement system of the university for each such employee his proper proportion of the funds allocable to



such employee under the State retirement system . . ."

It is not clear from this language if both the share of the employee and the amount contributed by the State are to be paid over to the University. While there is no prohibition against the payment over of the share of the employee the distribution of any share contributed by the State would be prohibited.

The Constitution of Maine provides as follows:

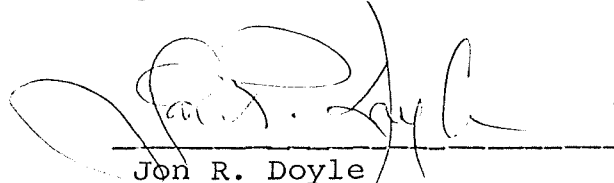
"All of the assets, and proceeds or income therefrom, of the Maine State Retirement System . . . and all contributions and payments made to the system to provide for retirement and related benefits shall be held, invested or disbursed as in trust for the exclusive purpose of providing for such benefits and shall not be encumbered for, or diverted to, other purposes." Constitution of Maine, Art. IX, Sec. 18

This provision is intended to prohibit the diversion of monies placed in the System by the State; it would not therefore be constitutional to provide for diversion as in L. D. 1258. It appears, with the above exception, that if similar language is utilized, the problem concerning retirement benefits can be revalued.

4. Are there problems concerning state scholarships?

It is noted also that the State can provide under existing statutes (Title 20, M.R.S.A. § 2306) for certain scholarships. This provision could be retained and sufficiently amended so that

it would continue and no vested rights would be effected.

A handwritten signature in cursive script, appearing to read "Jon R. Doyle", is written over a horizontal line.

Jon R. Doyle  
Assistant Attorney General