STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

Thus, an express legislative mandate has been given to remove all existing structures except those necessary to carry out the intent of the chapter creating the Allagash Wilderness Waterway. If the legislature desired the State Park and Recreation Commission to receive prior Governor and Executive Council approval before removing a structure within the restricted zone of the waterway, the legislature would have made a statutory proviso to that effect. There is no such proviso. To the contrary, discretion is lodged with the State Park and Recreation Commission to determine what structures are necessary to carry out the intent of the legislature in creating the Allagash Wilderness Waterway.

JEROME S. MATUS
Assistant Attorney General

May 12, 1969
Bureau of Mental Health

William E. Schumacher, M.D., Director

Liability of State of Maine for Medical Expenses Incurred with Regard to Treatment of State Hospital Patient for Self-inflicted Gunshot Wound Occurring at Patient's Parental Residence.

SYLLABUS:

The State is immune from suit for the recovery of medical expenses incurred with respect to the treatment of a state hospital patient for a self-inflicted gunshot wound occurring away from the State Hospital at the patient's parental home. Action of the Legislature would be necessary to permit such suit. Absent negligence in permitting the release of a State Hospital patient to her parental home the State cannot be held liable for medical expenses incurred with respect to treatment of such patient for a self-inflicted gunshot wound occurring away from the State Hospital at the home of her parents.

FACTS:

The patient in question was admitted to the State Hospital in May, 1961. She was divorced from her husband in 1963, his responsibility for support of the patient being limited to $1.00 per month. From the date of admission until 20 November 1968, the patient had on frequent occasions been released from the State Hospital to reside temporarily with her parents, one such occasion occurred in June of 1968. In October 1968, the mother of the patient included a comment in a personal letter to a social worker of the hospital, addressed to the social worker's personal address, relative to the patient during the June visit having been found with the kitchen doors closed and the range gas jets on. The parents immediately returned the patient to the State Hospital. No other comment was ever made with respect to this alleged incident and it was not brought to the attention of any physician of the State Hospital until 7 December 1968. The medical records at the institution show no indication of there having been suicidal tendencies manifested by this patient.

On 20 November 1968, this patient was transported to her parental home, the visit having previously been arranged with her parents with the approval of the attending State Hospital physician. On 25 November 1968, the patient shot herself in the

abdomen, was hospitalized therefor at great expense at a local hospital and was on 30 November 1968 returned to the State Hospital.

It was with a firearm available to her at the parental home that at, or about 4 a.m. on 25 November the patient, having removed the weapon and cartridges from their usual location shot herself in the manner above mentioned.

The parents now request that the State of Maine pay all bills incurred in the administration of medical treatment for the gunshot wound.

QUESTION:

Is the State liable for medical expenses incurred for the treatment of an adult patient for a self-inflicted gunshot wound occurring away from a State Mental Hospital, at the home of her parents, absent negligence on the part of the State's physicians in permitting release of the patient to the parental home?

ANSWER:

No.

REASON:

The "sovereign immunity" doctrine applies here and is stated as follows:

> "The rule is well settled that the state, unless it has assumed such liability by constitutional mandate or legislative enactment, is not liable for injuries arising from the negligent or other tortious acts or conduct of any of its officers, agents, or servants, committed in the performance of their duties. . . ."
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> 49 Am. Jur. States, Territories, and Dependencies, § 76, 288
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> "The rule of non-liability of the state for the torts of its officers, agents, and servants applies to those agencies through which the state acts in the administration of government as well as to the state itself. Thus, state institutions, such as hospitals and asylums for the care of mental defectives, houses of correction, industrial and reform schools, and the like, and other such institutions as agencies of the state are exempt from liability for torts of officers, agents, or servants of such institutions. Thus, the officers of the state in charge of such institutions are not liable in tort for acts in the exercise of an official discretion, or for the negligence or wrongs of their subordinates."
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> 49 Am. Jur. States, Territories, and Dependencies, § 78, 291, 292

Legislative action would be required to permit suit against the State for the medical expenses under discussion. Any such suit under the facts must be based upon a negligence theory.

To take the position that the State is immune from suit in the instant matter may be considered dispositive of it. There is no existing authority for the payment of such medical expenses by the State, nor do we view such expenses to be appropriately the responsibility of the State.

The fact that the parents of the patient did not sign any agreement assuming responsibility for the patient at the time she was received into the parental home on 20 November 1968 is of no consequence.

The fact that the hospital is under a duty to provide a high standard of care and treatment to its patients is irrelevant as to the issues raised here with respect to the extraordinary medical expenses incurred due to the self-inflicted gunshot wound. It is

also irrelevant that the parents cannot be held liable for the patient's support at the State Hospital under Title 34, Chapter 195, since that Chapter relates only to care and treatment in a State Hospital subject to rates fixed by the Department of Mental Health and Corrections and is unrelated to medical expenses of the type in question.

In order for the State to be held liable in the event an action were authorized by the Legislature it must be proved that the State by its authorized agents was negligent.

COURTLAND D. PERRY
Assistant Attorney General

May 16, 1969

Honorable Charles T. Trumbull
Executive Council Chambers
State House
Augusta, Maine

Dear Councillor Trumbull:

You have presented two questions for consideration involving: (1) Public Administrators and (2) the State Contingency Account.

(1) Does a public administrator of a county, appointed for a term of 4 years pursuant to 18 M.R.S.A. §1651, serve until his successor is appointed and qualified, or does the term of a public administrator expire by operation of law at the conclusion of 4 years? The Governor, with the advice and consent of the Executive Council, appoints public administrators in each of the counties of the State for terms of 4 years. In order to determine whether a public administrator is permitted to hold office for a term exceeding the statutory 4-year period, it is necessary to determine whether a public administrator is a civil officer within the meaning of 5 M.R.S.A. § 3. Section 3 permits a civil officer to hold office during the term for which he is appointed and for the further period of time until his successor in office is appointed and qualified. A public administrator has been regarded as a public officer. *Los Angeles County v. Kellogg,* 146 Cal. 590, 80 P. 861; and *In Re Miller's v. State,* 5 Cal. 2d 588, 55 P. 2d 491. A civil officer is one regarded as an officer who is in public service but who is not of the military. *U.S. v. American Brewing Co.,* 296 F. 772, and *State v. Clarke,* 21 Nev. 333, 31 P. 545. We conclude that a public administrator is a civil officer and, therefore, holds office during the term for which he is appointed and until his successor in office has been appointed and qualified. *5 M.R.S.A. § 3.*

(2) You next ask whether amounts from the State Contingent Account may be allocated to a state department for one of the reasons set forth in 5 M.R.S.A. §1507, in anticipation of the department's receipt of future revenues, with a proviso that such allocation be reimbursed in the same fiscal year that the allocation occurs? We answer in the affirmative. The third sentence of §1507 provides that the Governor and Executive Council shall determine the necessity for allocations from the State Contingent Account. In the event that the allocation is reimbursed by the department in the same fiscal year in which that allocation occurs, and provided the allocation is made for a purpose specified in §1508, it appears that the making of such an allocation in anticipation of the receipt of revenues and its reimbursement would not be illegal. Whether one of the conditions specified in §1508 exists as a condition precedent to the allocation, is a question of fact to be determined by the Governor and Executive Council in the exercise of their discretion. *Vandegrift v. Riley,* 220 Cal. 340, 30 P. 2d 516.

Thank you for your attention.

Very truly yours,
JOHN W. BENOIT, JR.
Assistant Attorney General