

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

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

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

May 16, 1969

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