

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

having obtained a license from the Public Utilities Commission.

It is noted that the statutory language of the Public Utilities Commission regulatory law speaks in terms of a "person," as opposed to a municipal corporation or school administrative district, obtaining a license to operate in special or charter service. That the specific statutory language does not state reference to corporations, municipal corporations or administrative school districts, does not alter this opinion.

The Rules of Construction of the Maine Statutes, 1 M.R.S.A. § 72 (15), affirmatively states that the term "person" may include a body corporate. The word may be properly construed to include a municipal corporation as well as a private corporation.

Therefore, a municipal corporation or school administrative district is required to obtain a license from the Public Utilities Commission before it operates a school bus it owns for the purpose of transporting passengers other than students to and from school, and students and chaperones to and from school activities.

Very truly yours,

HORACE S. LIBBY
General Counsel
Public Utilities Commission

GEORGE C. WEST
Deputy Attorney General
Dept. of Attorney General

December 5, 1969
Probation and Parole

G. Raymond Nichols, Director

Affect of P.L. 1969, Chapter 460, AN ACT To Provide for the Expunging of Certain Records of Arrest on State Division of Probation and Parole

SYLLABUS:

The Division of Probation and Parole is not a law enforcement agency subject to expunging of arrest records provisions under 16 M.R.S.A. § 600, P.L. 1969, c. 460, AN ACT To Provide for the Expunging of Certain Records of Arrest.

FACTS:

Probation and Parole officers of the Division of Probation and Parole are involved in the conduct of investigations requested by the Courts in criminal cases. Reports prepared in connection with such investigations contain information relative to the arrest of individuals under investigation.

QUESTION:

Are records of the Probation and Parole Division subject to P.L. 1969, c. 460, AN ACT to provide for the Expunging of Certain Records of Arrest?

ANSWER:

No.

REASON:

“ § 600. Records of arrests

Whenever a person has been acquitted of a crime in any court or has had a complaint, information or indictment against him dismissed by any court, the clerk of that court shall forward a certified copy of the docket entry of acquittal or dismissal to any law enforcement agency, including the State Bureau of Identification, having records of arrest or detention relating to the arrest of the person. Upon the receipt of the certified copy, each agency shall expunge from its records, excluding investigative and communication records, fingerprints and photographs, any reference to the arrest of the person on that charge. The State Bureau of Identification shall forward a copy of the docket entry to the Federal Bureau of Investigation ”

The issue to be resolved here is whether the Division of Probation and Parole is a law enforcement agency and thus, subject to the expunging of arrest records provisions of T. 16 M.R.S.A. § 600.

We look to Maine Statutes for assistance by way of a manifested legislative intent as to agencies considered within the purview of the cited section. We find the following language in 34 M.R.S.A. § 1551:

“ The Department of Health and Welfare, Department of Mental Health and Corrections, officers and staffs of the penal and correctional institutions, and *law enforcement agencies* in the State shall *cooperate* with the board in exercising its administration.” [Emphasis ours]

Title 4, M.R.S.A. § 173

“The following provisions shall apply to the District Court:

. . . . The term ‘law enforcement officer’ shall include a state police officer, game warden, state liquor inspector, sheriff, deputy sheriff, municipal police officer, constable and any person whose duty it is to enforce any criminal law of this State by making arrests.”

The only arrest authority vested in a Probation and Parole officer is set forth in 34 M.R.S.A. § 1502:

“The general powers and duties of a probation-parole officer are:

. . . . 7. Arrest violators. To arrest and return probation and parole violators on warrants issued by the appropriate authorities.”

This section is subject to an exception contained in 34 M.R.S.A. § 1675, as amended, relative to arrest and detention of a parole violator without a warrant. This arrest authority, however, is unrelated to violations of the law and relates only to violations of probation and parole conditions, and although, the breach of a condition may be a violation of the law, arrest with respect thereto is based upon a warrant acted upon by a law enforcement officer.

From the foregoing we perceive two classes of officers and agencies. Law enforcement on the one hand, and Probation and Parole as a part of the correctional arm of the State, cooperating with law enforcement officers and agencies on the other hand.

We are, therefore, of the opinion that the Division of Probation and Parole is not subject to expunging of arrest records under 16 M.R.S.A. § 600, such Division being outside the category – law enforcement agency. Furthermore, it is asserted that records of the Division of Probation and Parole not arising from initiation of arrest for crime in

any case, and considering the function of Probation and Parole officers, particularly with reference to their relationship to the Courts, would be within the exclusion found within 16 M.R.S.A. § 600, since the same are "investigative" records.*

*Reaching this conclusion there is no need for discussion of the confidential nature of records of the Probation and Parole Division rendered confidential under 34 M.R.S.A. § 1. This subsidiary issue was raised by the agency making the request for this opinion and is not explored nor developed due to our conclusion.

COURTLAND D. PERRY
Assistant Attorney General

December 9, 1969
Governor Baxter State School for the Deaf

Joseph P. Youngs, Jr., Supt.

Applicability of P.L. 1969, Chapter 320 to Governor Baxter State School for the Deaf in Providing Certain Services to Students.

SYLLABUS:

Provision of group auditory amplification equipment to deaf students for classroom use is not subject to control under 32 M.R.S.A. Chapter 23 A. The Governor Baxter State School for the Deaf may purchase and sell to students at cost hearing aid batteries and cords without violating any provision of 32 M.R.S.A. Chapter 23 A, but any other hearing aid accessories must be purchased from a licensed hearing aid dealer.

FACTS:

The Governor Baxter State School for the Deaf provides group auditory amplification equipment to deaf students for use in classroom instruction.

The Governor Baxter State School for the Deaf purchases and makes available to students at cost, hearing aid accessories, e.g., batteries and cords.

QUESTIONS:

Are either of the following practices violative of any provision of 32 M.R.S.A. Chapter 23 A, P.L. 1969, Chapter 320:

1. Provision of group auditory amplification equipment to deaf students for classroom use?
2. Purchase and resale at cost to students of hearing aid accessories, i.e., batteries and cords?

ANSWERS:

1. No.
2. No.