

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

The law does not refer to “parts” or “portions” of municipalities but speaks in terms of whole entities.

2. The language of 38 M.R.S.A. §1103 and §1106 (P.L. 1965 c. 310, as amended by P.L. 1967, c. 524) sets forth the intent of the Legislature that the sanitary district formed shall have complete ownership and control of the sewer property or properties necessary to carry on the functions of the district. 38 M.R.S.A. § 1103 states:

“ . . . the trustees of said sanitary district shall determine *what sewer property or properties* including treatment plants owned by any municipality within said sanitary district *shall be necessary to carry on the functions of the sanitary districts* and shall request in writing that the municipal officers of any municipality within said sanitary district convey the title to such sewer property . . .” (Italics supplied.)

38 M.R.S.A. §1106 states:

“ . . . the sanitary district shall become operative and *the trustees shall assume the management and control* of the operation of *all of the public sewers, storm and surface water drains*, treatment plants and related structures within the sanitary district and *the municipalities . . . shall have no responsibility* for the operation or control of *the public sewers and storm and surface water drains* and treatment plants within their respective jurisdictions. . . .” (Italics supplied.)

The law thus implies that “the public sewers and storm and surface water drains” are “necessary to carry on the functions of the sanitary district(s)” and thus must be transferred to the trustees of the district.

E. STEPHEN MURRAY
Assistant Attorney General

August 13, 1970

Dean Fisher, M.D., Commissioner, Department of Health and Welfare

Title 32, section 4182 M.R.S.A. (Certification of Social Workers without examination)

SYLLABUS:

The State Board of Social Worker Registration acted beyond its authority by establishing regulations relating to qualifications of social workers for the purpose of certification with the Board which were in direct conflict with Title 32, section 4182, M.R.S.A.

FACTS:

On or about January 15, 1970, the State Board of Social Worker Registration established and circulated regulations as to who could be certified by them as either Registered Social Workers or Associate Social Workers. Among others, the regulations provided that only those applicants with full Masters or Bachelors Degree credentials would be certified without examination, pursuant to Title 32, section 4182, M.R.S.A.

QUESTIONS:

1. Did the State Board of Social Worker Registration act within its rule making authority in establishing regulations requiring Masters or Bachelors Degrees of those persons applying for certification under Title 32, section 4182, M.R.S.A.?

2. What action, if any, should be taken by the Board to rectify its error?

ANSWERS:

1. No.
2. See reason.

REASON:

The State Board of Social Worker Registration derives its rule making authority under Section 4179 of Title 32. It provides the usual language giving the Board power to make such rules and regulations as are necessary to carry out its duties under the law.

The Board's duties as to the qualification of social workers is contained in Sections 4181 and 4182.

Section 4181 sets forth the general qualifications which must be met by a person in order to be certified by the Board. Among the required qualifications are a Masters Degree for a Registered Social Worker and a Bachelors Degree for an Associate Social Worker.

Section 4182 covers the certification of social workers without examination and is the part of the law the interpretation of which is of primary concern here. The first sentence of this section is the one vital to this opinion and states as follows: "*Any person who within six months after the effective date of this chapter submits his application to the board on the prescribed form, pays the necessary fee and furnishes satisfactory evidence to the board that he is 21 years of age or over, of good moral character, a resident of this state, is employed as a social worker or was so employed for two years out of the preceding five years, shall be registered by the board and certified as a registered or associate social worker without examination.*" (Italics added.) As stated in *State ex rel City of Indianapolis vs. Brennan*, 109 N.E. 2d 409 (Indiana case) "The word 'shall' when used in a statute will be construed to be mandatory rather than directory, unless it clearly appears from context or from manifest purpose of act as a whole that legislature intended that a different construction should be given to the word 'shall'." No such contrary intention is evident in this statute.

Section 4182 is then an exception, or grandfather clause if you prefer, to the qualifications required in section 4181 and the Board by regulations cannot require a qualification which the legislature plainly intended should not apply to those persons who came within the distinct and separate qualifications of section 4182.

See 1 Am Jur 2d, s 132 and *Bingham's Trust vs. Comm* 325 V.S. 365 In which it is said, "Legislation may not be enacted by an administrative agency under the guise of its exercise of the power to make rules and regulations by issuing a rule or regulation which is inconsistent or out of harmony with the act being administered."

See also *Joyce vs. Webber* 157 Me 234, "Insofar as rules promulgated by subordinate authority tend to contravene provisions of controlling law, rules are of no effect."

Perhaps the most troublesome problem here presented is as to what the Board must do to rectify its error. Of course, if an applicant has met the legal requirements of section 4182 as to qualification for certification by the Board, it is duty bound to certify that person. However, only those who have met all the requirements of the first sentence of section 4182 would be considered as having met the legal requirements. One of these requirements is that application be made by the prospective social worker within six

months after the effective date of the act, which was October 1, 1969. This allowed applications to be made up to April 1, 1970. The Board, however, in about mid-January of 1970 promulgated the offending regulations and saw to it that some ninety social worker organizations and associations were furnished with copies thereof. This action by the Board has undoubtedly prevented an unknown number of persons from seeking certification.

It is suggested, therefore, that the Board review all applications made but rejected because the applicants lacked the required degree. If all other qualifications were met, these persons should be certified without delay. As to those unknown persons who might have applied, but did not, they cannot legally be considered under the statute as it now stands.

The Board might well consider going to the 105th Legislature with a request for relief, perhaps in the form of a new grandfather clause which would encompass those persons reasonably intended to be encompassed, keeping in mind the obvious problem of determining who these people might be. This clause should also encompass those applicants who will now be certified as a result of this opinion, thereby removing any lingering doubt as to the legality of their certification.

One more problem faces the Board and that is contained in the last words of the first sentence of section 4182. They provide for certification "as a registered or associate social worker without examination," but give no guideline as to how the Board should determine which type social worker a given applicant should be. It would then appear that the Board has broad discretion to set up its regulations relating to this subject so long as it certifies qualifying applicants as one or the other. It could, it would seem, require that applicants under this section must have a Masters or Bachelors Degree to become a registered social worker leaving all those without such qualifications to be associate social workers. This is a suggestion merely, but should provide a guide to the Board in setting up its regulations.

KEITH N. EDGERLY
Assistant Attorney General

August 17, 1970
State

Joseph T. Edgar, Secretary of State

Required Filing of Affidavit by Foreign Corporations

SYLLABUS:

A foreign corporation having power to loan money in its state of incorporation may not utilize that power in Maine upon registration with the office of the Secretary of State. Such a corporation is a bank under Maine law and must forego the power to loan money in Maine.

FACTS:

A foreign corporation has registered with the Secretary of State to do business in Maine. At the time of registration it was empowered under the laws of the state of incorporation to loan money for profit. At the request of the Secretary of State affidavits stating it would not loan money nor engage in any activity prohibited by