

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

paroled to another sentence but the sentence being served is terminated and the inmate begins execution of another sentence.

In consideration of the question presented here the import of 34 M.R.S.A., 1964, §1678 is intelligible from its language, such section providing that a person serving a life sentence shall be on parole for not less than 10 years. We dispose of this question by stating that a person serving a life sentence who escapes from the Maine State Prison and whose life sentence is terminated pursuant to authority vested in the State Probation and Parole Board by Title 34, § 710, and who is commenced in execution of a sentence for escape will never be paroled in connection with the life sentence. Parole in such instance, if it is ordered, will be in connection with the sentence for escape. The appropriate disposition of the case of an inmate serving a life sentence who faces execution of a sentence for escape is a matter discretionary with the State Probation and Parole Board, the Board bearing in mind that the 10 year parole supervision provision of Title 34, §1678 will never be operative as to the inmate after the Board exercises its authority and terminates the life sentence.

In reaching the conclusion reached here we find that protection of the public, in the instance of parole of an inmate serving a life sentence by mandatory 10 year parole supervision is diminished in the case of the inmate serving a life sentence who commits an offense covered by Title 34, §710, when the State Probation and Parole Board exercises its authority by termination of a life sentence, permitting execution of the sentence imposed for the offense covered by the latter section. When finally paroled the inmate will be subject to parole supervision only for the duration of the sentence for such offense – in the case of the inmate in question such supervision may approximate one year. We are constrained, however, to conclude that the language of Title 34, § 710 clearly and specifically relates to persons serving life sentences and is remedial in that it provides a means by which an inmate serving a life sentence who commits an offense covered by Title 34, § 710, may be returned to the community. The burden rests with the State Probation and Parole Board to determine the propriety of termination of the life sentence, permitting execution of the sentence imposed under Title 34, § 710, and ultimate release absent the 10 year mandatory parole supervision which would otherwise obtain.

In summary we are of the opinion that in accordance with authority vested in the State Probation and Parole Board by Title 34, §710, the life sentence being served by an inmate at the Maine State Prison may be terminated by the State Probation and Parole Board, such termination power being in addition to parole authority vested in the Board by Subchapter V of Chapter 121 of Title 34 and such inmate following termination of the life sentence, shall begin execution of the sentence for escape. In such case the 10 year parole supervision provision of Title 34, § 1678 would be inoperative, since the inmate at the time of parole would not be serving a life sentence.

COURTLAND D. PERRY
Assistant Attorney General

April 5, 1971
Bureau of Corrections

Ward Murphy, Director

Use of Portion of Boys Training Center Diagnostic Unit General Fund Bond Issue Proceeds for Alterations to Security and Infirmary Building.

SYLLABUS:

Where the Legislature has provided for the allocation of proceeds from a General Fund Bond Issue for a "Diagnostic Unit" at the Boys Training Center, the expenditure of such proceeds is legally permissible for the construction of a new building and the alteration of a portion of an existing building, the composite of which, upon completion, will be the "Diagnostic Unit" at such institution.

FACTS::

The 104th Legislature in Special Session authorized a General Fund Bond Issue, a portion of the proceeds of which, by the language of the Act P&SL 1970, Chapter 240 was allocated for:

"Mental Health and Corrections, Department of
Boys Training Center Diagnostic Unit
\$375,000"

It is proposed that the Diagnostic Unit to be constructed at the Boys Training Center consist of a new building and a portion of the Security and Infirmary Building altered in certain respects to provide the following:

1. An area for academic tutoring on a 1-1 or a 1-2 basis so that the academic program can be continued in the treatment of the boy while in security.
2. An area for consultation on a 1-1 or a 1-2 basis so that counseling from the social services of the institution may continue while the child is in security.
3. An area in which a boy or boys may be involved in limited recreational activities as he progresses in his program within this area.

This proposal assures the nonduplication of specialized institutional buildings or portions of buildings. The estimated cost of alterations to the Security and Infirmary Building to permit its use as a part of the Diagnostic Unit is \$54,000.

QUESTION:

Does there exist any legal prohibition against expending a portion of the proceeds from the General Fund Bond Issue authorized by P&SL 1970, Chapter 240 in the alteration of the existing Security and Infirmary Building at the Boys Training Center for the purpose of permitting the use of an area in such building as a part of the Diagnostic Unit authorized to be constructed at the institution?

ANSWER:

No.

REASON:

P&SL 1970, chapter 240 provides in pertinent part:

"The proceeds of the sales of such bonds, which shall be held by the Treasurer of State and paid by him upon warrants drawn by the Governor and Council, are appropriated to be used solely for the purposes set forth in this Act"

“Sec. 6.
“Mental Health and Corrections, Department of
Boys Training Center
Diagnostic Unit

\$375,000”

The Legislature with reference to the use of proceeds from that portion of the Bond Issue designated for construction at the Boys Training Center refers to “Diagnostic Unit.” We consider this language to refer more to the ultimate function for which the constructed facility is to be used than to the location or physical attributes of the proposed construction. We have addressed ourselves, from time to time, to similar questions with reference to the use of proceeds from General Fund Bond Issues, e.g., an Opinion of this office was issued on December 11, 1969, with reference to the use of proceeds from a General Fund Bond Issue, wherein the Legislature made specific reference to an “Addition Gould Academic Building.” We express the opinion, in connection with the last quoted language, that General Fund Bond Issue proceeds were required to be expended upon construction of the specified building addition.

We do not find such restrictive language in P&SL 1970, chapter 240. The Legislature has not provided for the construction of a particular building or an addition thereto, or renovations thereof, but has spoken in terms of a “Unit” to be used for an institutional purpose, i.e., “Diagnostic.” We do not find a departure from the intended purpose of the General Fund Bond Issue Act in the proposed use of the proceeds from the Bond Issue in the construction of a building and the alteration of a portion of the Security and Infirmary Building, wherein the composite of such construction and alteration, upon completion, will be the “Diagnostic Unit” at the Boys Training Center. Such construction and alteration shall, of course, be accomplished through the expenditure of not more than the amount of \$375,000 allocated by the Legislature for the Boys Training Center “Diagnostic Unit.”

COURTLAND D. PERRY
Assistant Attorney General

April 23, 1971
Maine State Retirement

Edward L. Walter, Ex. Secretary

Creditable Service for Service to Parochial Schools & Academies

SYLLABUS:

Public School teachers, after completing 10 years of service in public schools in this State, may purchase up to 10 years of creditable service for their service in parochial schools or public or private academies provided that the service was performed in parochial schools or academies located within this State.

FACTS:

Relying on 5 M.R.S.A. § 1094 subsection 14, a public school teacher, who has had more than 10 years of service in public schools in this State, has made application with the Retirement System for permission to purchase credit for service performed in and out-of-state parochial school.