STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

OPINION NO. 5:

We again direct your attention to the fact that the subject law leaves the determination of adequacy of local shoreland zoning ordinances upon the named state agencies. The agencies must develop their own criteria for determining adequacy. The municipality's record of administration and enforcement of the ordinance may well be a factor which the Commission might wish to consider in making its determination.

ROBERT G. FULLER, JR.
Assistant Attorney General

April 27, 1972
Pineland Hospital & Training Center
Mental Health and Corrections

To: Anthony L. Meucci, Business Manager

Housing and Food Supplies Furnished by State Institutions

SYLLABUS:

An affiliation program whereby students from hospitals and universities at Pineland for a training period, would receive free room and board in lieu of any other compensation, is not affected by P.L. 1971, Chapter 588. Nor does this law apply to parents of patients at Pineland for evaluation who receive accommodations without charge. If those parents are essential to the proper evaluation of the patient at Pineland, they may receive accommodations at Pineland but unless indigent, must be assessed the cost of such accommodations.

FACTS:

Pineland Hospital and Training Center wishes to establish affiliations with various hospitals and universities whereby students from those institutions would receive free room and board in lieu of any other compensation while at Pineland. In addition, Pineland has maintained a one-motel unit for the housing of the parents of an outpatient who is at Pineland for an evaluation.

QUESTIONS:

1. May Pineland Hospital and Training Center continue to provide meals and lodgings to students from universities and hospitals who are affiliating with said hospital in light of recent State law?
2. May Pineland continue to provide lodging at no cost to parents of patients at Pineland for evaluation?

ANSWERS:

1. Yes.
2. No.

REASON:

R. S. T. 5, §§ 8-A - 8-C, Enacted by P.L. 1971, Chapter 588, is an Act relating to housing and food supplies furnished by state departments to state employees. That Act's emergency preamble reads in part,

> "Whereas, a constant review of providing means for housing and food for state employees is essential, if state government is to continue to provide the services required of it in an efficient and economical manner;. . . *Be it enacted by the People of the State of Maine,* as follows:
>
> § 8-A. Declaration of purpose
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> For the benefit of the people of the State, it is essential that certain activities of the State Government be constantly reviewed in order to provide essential state services more efficiently and economically. To aid in accomplishing this purpose and due to improved travel conditions and communications, housing for state employees at state institutions and other areas of State Government and commissaries operated by state departments for the sale of food and food supplies to state employees shall be controlled as set forth in sections 8-B and 8-C respectively."

From the language in the preamble and in the Declaration of purpose, it is clear that this Act is aimed specifically at state employees. Students in an affiliation program with Pineland are not employees. They are students whose sole purpose for being at Pineland is for the clinical experience which is essential if they are to become proficient in their chosen profession. They are not there for the purpose of earning a living.

From the language throughout Chapter 588, it is clear that the legislature did not intend that this chapter should apply to anyone but state employees. Thus, an affiliation program with various universities and hospitals is not prohibited by this recent law.

The question of providing lodging at no cost to parents of patients at Pineland for evaluation, is an entirely different matter. While this law does not seem to apply to anyone but state employees, it is not clear that anyone's relatives should receive free housing at Pineland. Chapter 588 does make provisions for some employees, if they meet a criteria, to be provided with housing at state institutions but even that must be at cost. There should be little doubt that if the parents of patients at Pineland for evaluation are housed at Pineland only to be near their children, it would be very difficult to find authority to allow them to be so housed. However, if it is true that the parents are an integral part of that patient's evaluation, and without them the effective examination of the patient could not be carried out, then their use of Pineland accommodations would be entirely proper. This determination would be properly the responsibility of the hospital staff. If, after such a determination, they concluded that parents are an essential part of such an evaluation, it is still not clear that those accommodations should be provided free of charge. Title 34, Section 2512 states,

> "Each patient and the spouse, adult child and parent, jointly and severally, shall be legally liable from the date of admission for the care and treatment of any patient committed or otherwise legally admitted to either state hospital for the mentally ill, the Pineland Hospital and Training Center or the Regional Care facility for the Severely Mentally Retarded at Bangor, except that a parent shall not be legally liable for care and treatment unless the patient was wholly or partially dependent for support upon such parent at the time of admission."

Since the parents of the patient at Pineland for evaluation are responsible for the cost of that evaluation, then they should also be responsible for the cost of any housing provided for them at Pineland. However, if the parents are indigent, it would seem that

they are not liable for either the cost of the evaluation of the patient or for the housing provided to them. This determination of the ability to pay should be done in light of Title 34, Section 2513 which states in part,

"It (Department of Mental Health and Corrections) shall ascertain the financial condition of any such person (parents) and shall determine whether in each case such person is in fact financially able to pay such charges."

The affiliation program as operated in the past, whereby students receive free room and board in return for their services, does not seem to be affected by recent law. Parents of patients at Pineland for evaluation, however, unless indigent, must pay for the actual cost of their stay at Pineland.

WILLIAM J. KELLEHER
Assistant Attorney General

May 11, 1972
Secretary of State

Peter M. Damborg, Deputy

Limitations on Expenditures for Political Advertising by Candidates – Effect of the Federal Campaign Act of 1971

By your memorandum dated April 11, 1972, you have asked whether the Federal or State law takes precedence in the matter of governing limitations on the amount which candidates of the United States Senate and the Congress can spend.

In my opinion, Title I of the Federal Campaign Act of 1971 P.L. 92 - 225; 86th stat. (3) entitled the "Campaign Communications Reform Act" has in effect pre-empted the field and with certain minor exceptions in the area of final reports, governs the matter of expenditures for political advertising by candidates for the United States Senate and the United States House of Representatives.

The Federal Act covers specifically expenditures for the use of "Communications Media", which are defined in § 102 (1) thereof to mean 'Broadcasting stations, newspapers, magazines, outdoor advertising facilities and telephones . . . ." The Federal Act also covers, by implication, any other expenditures which may legally be made by candidates including all printed matter.

Article VI, Clause 2, of the Constitution of the United States, provides:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or bylaws of any state to the contrary notwithstanding."

In *State v. Cohen,* 133 Me. 293, 299, it is said:

"The Constitution of the United States is the supreme organic law. A state statute repugnant to the Federal Constitution is void."

In the *Constitution of the United States of America,* revised and annotated, 1963, at P. 808, it is said that in applying the supremacy clause to subjects which have been regulated by Congress, the primary task of the court is to ascertain whether a challenge to the state law is compatible with the policy expressed in the federal statute. "To the federal statute and policy, conflicting state law and policy must yield." And on P. 808, it is stated that today the application of the supremacy clause is becoming, to an ever