STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

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

increasing degree, a matter of statutory interpretation – a determination of whether the state laws and regulations can be reconciled with the language and policy of federal enactments.

In *Reynolds vs. Sims,* 377 U.S. 533, it is stated that, "When there is an unavoidable conflict between the federal and a state constitution, the supremacy clause, of course, controls."

In *Auburn Savings Bank vs. Portland R Company,* 144 Me. 74, cert. den., 338 U.S. 831, reh. den., 338 U.S. 881, the court said (on page 90),

> ". . . the states are barred, either by legislation or by court action from interfering in any way with the overriding federal authority."

In *State vs. the University of Maine* (Me.) 266 A. 2d 863, it was held that a state statute providing that the state educational television system might not be used for promotion or advancement of any political candidate violated the supremacy clause of the Constitution of the United States in that it would be impossible for the operator of an educational television system to obey the rigid censoring requirements of the statute, and at the same time satisfy federal licensing requirements that programs be shown which are in the public interest.

It would seem clear, then, that with respect to the five areas of communications media mentioned above, the federal "Campaign Communications Reform Act" has specifically pre-empted the field.

This Federal Act, however, has no specific provision which limits expenditures for any type of advertising not therein defined as "communications media." Printed matter, addressed and mailed to prospective voters, designed to promote a political candidacy is not included in the federal definition of "communications media." The question, then, is whether such advertising is nevertheless controlled by or under the umbrella of the Federal Act by reason of § 403 (b) or by reason of the purpose or policy of the Federal Act to limit campaign spending.

Section 403 of the Federal Act provides as follows:

> "(a) Nothing in this Act shall be deemed to invalidate or make inapplicable any provision of any state law, except where compliance with such provision of law, would result in a violation of a provision of this Act.
>
> (b) *Notwithstanding subsection (a),* no provision of state law shall be construed to prohibit any person from taking any action authorized by this Act or from making any expenditure (as such term is defined in § 301 (f) of this Act) which he could lawfully make under this Act." (Emphasis Supplied)

This raises the important question, what is meant by the words "under this Act" in § 403 subparagraph (b) quoted above?

In *Words and Phrases,* Volume 43, pages 149, et seq., it is stated that "under" may mean "in accordance with" and "in conformity with." *(Citing Wilmington Trust Company vs. Morris)* (Del.) 54 A. 2d 851, 853.

Section 403, subparagraph (b) provides that: "No provision of state law shall be construed to prohibit any person from . . . making any expenditure which he could lawfully make under this Act." I judge that a candidate for the United States Senate or the United States House of Representatives may lawfully make an expenditure under the Federal Act which is not prohibited by the Act. Inasmuch as the Federal Act is silent on the subject of direct mail advertising, or printed matter of any kind, it follows that the federal government did not intend to make expenditures for these purposes either unlawful or limited by the amount of money that could be spent. It would follow that if expenditures for printed matter, advertising and mailing may be lawfully made under the Federal Act, the state's statutes limiting such expenditures by virtue of 21 M.R.S.A. §

1395, subparagraphs 3 and 4 as enacted by P.L. 1971, Chapter 207 cannot limit these expenditures by Congressional and Senatorial candidates.

In the last analysis, the United States Senate and the United States House of Representatives have the final word as to who shall sit in their halls. They clearly also have the power to set the procedural limitations and requirements for entering those halls. Inasmuch as they have ruled by statute in this area as to what the proper procedure shall be, in my opinion the field is now exclusively in the hands of the Federal law makers; and the State of Maine is not in a position to add or detract therefrom.

JAMES S. ERWIN
Attorney General

May 30, 1972
Insurance

Theodore T. Briggs, Deputy Commissioner

Insurance – Dealer Liability Insurance

SYLLABUS:

A policy which fails to provide insurance protection while the vehicle of a dealer, loaner or transporter is being operated by a customer with the vehicle bearing the registration plates of the vehicle dealer, loaner or transporter does not meet the requirements of 29 M.R.S.A. § 832.

FACTS:

An insurance company is issuing a vehicle insurance policy which has the following pertinent provision regarding limitation of liability:

> "any other person or organization legally responsible for the use thereof only while such automobile is physically operated by the named insured or any such partner or paid employee or director or stockholder, or member of the household of the named insured or partner or paid employee or director or stockholder, provided the actual use of the automobile is by the named insured or with his permission."

It further appears that the insurance company concedes that its policy provides no coverage when the vehicle is bearing plates of a dealer, loaner or transporter and is being operated by one of its customers.

QUESTION:

Does a vehicle insurance policy meet the requirement of 29 M.R.S.A. § 832 when the policy fails to provide insurance coverage while the vehicle is being operated by a customer with the vehicle bearing the plates of a dealer, loaner or transporter?

ANSWER:

No.