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STATE OF MAINE

Inter-Departmental Memorandum Date 23 June 1972

William F. Kearns, Jr., Commissioner

Dept. Mental Health and Corrections

From William J. Kelleher, Ass't. Atty. Gen'l.

Dept. Mental Health and Corrections

Subject Institutional Housing Rate

T. 5 & 8-D

SYLLABUS:

Chapter 588 of the Public Laws of 1971 requires that the Department of Mental Health and Corrections propose a plan which will arrive at the total operating cost of any housing facility it determines to be necessary for the operation of the Department. This cost is to be the rental charge made to any state employee occupying such facility. Any proposed plan is subject to the approval of the State Budget Officer but that officer lacks the authority to impose a plan of his own on the Department.

FACTS:

Chapter 588, Public Laws of 1971, mandates to the Department of Mental Health and Corrections that it shall review all the housing provided to its State employees and determine if those facilities are necessary for the operation of the Department and if so, to determine a rental charge which shall cover the total operating cost of any such facility. The Department shall establish and promulgate such rules and regulations which are necessary to carry out the purposes of chapter 588, subject to the approval of the Budget Officer. The Commissioner has requested an opinion of the Attorney General's Office on several aspects of such proposed rules.

QUESTIONS:

1. Is the method adopted by the Department of Mental Health and Corrections a proper method for determining charges under the act?
2. Is it legal under the statute to use a percentage of the insured valuation as a basis of the rate inasmuch as the statute explicitly states that the rental charge shall cover total operating costs of the facility?

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3. Has the State Budget Officer authority to impose an alternate plan of his making if he disapproves of the plan of the Department?

ANSWERS:

1. See Reasoning
2. No.
3. No.

REASON:

In response to Question 1, reference may be had to the text of Chapter 588, § 8-B which lists some of the operating costs which the legislature had in mind. "These costs shall include, but not be limited to, rates charged to the State, in operating such facility, for water, electricity, heat, telephone, furnishings, and any other maintenance costs." The formula used by the Department of Mental Health and Corrections to arrive at a total operating cost of each facility does take into account water, electricity, maintenance cost, building depreciation and fuel. Except for furnishings, the Department has at least covered all the costs which the legislature enumerated. However, the statute specifically states that the costs shall include those enumerated but not be limited to them. Chapter 588, requires that the total operating cost of each facility be recouped. Consequently, another cost, such as the insurance cost of each facility, may properly be an operational cost. However, this is obviously an accounting problem and not a legal determination. Construing the language of § 8-B reasonably, it is considered that the legislature intended that, wherever possible, actual costs should be the basis for a determination of rental charges. However, it may be impossible, practically, to make such determinations in every instance, averaging then being the only practical devise for reaching a cost determination. The method by which the Department of Mental Health and Corrections reaches the total operating cost of each facility is not properly a matter to which this Department should address itself.

In response to Question 2, using a percentage of the insured valuation of each piece of property as a basis of the rate to be charged, does not seem proper.

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However, using the actual cost of the insurance as one of the figures which is to be added into the other costs of maintaining each facility, does seem proper. By the enumeration of Section 8-B, the legislature specifically mandates that each of the listed costs shall be covered. Just using a percentage of the insured valuation as the basis of the rate to be charged, would be in contravention of the statute. The legislature has spoken on this point and each one of those charges must be used in computing the total operating cost of any such facility. It is true however, that insurance is a cost of operating a facility and the cost of that insurance may properly be included in the makeup of the total operating cost.

Chapter 588, Section 8-F, answers Question 3. It states, "Each department shall establish and promulgate, subject to the approval of the Budget Officer, rules and regulations to carry out the purposes of Sections 8-B to 8-C." Section 8-B mandates that all housing facilities of each state department shall be reviewed by the state department involved and if those facilities are necessary for the operation of the department, a rental charge shall be made to cover the total operating cost of any such facility. While that section does not specifically state that the state department involved shall determine the total operating cost of any such facility, Section 8-F does mandate that that department shall have the responsibility of establishing and promulgating the rules and regulations necessary to carry out Section 8-B. In addition, the last sentence of Section 8-B states, "Any facility used on a seasonal basis shall be partially exempt from rental charges, at the discretion of the department." This sentence removes any doubt about who has the determining responsibility which may exist in this matter. Clearly, the Department of Mental Health and Corrections has the responsibility to determine the charge which will cover the total operating cost of any of its housing facilities. Section 8-F states that any rules and regulations promulgated by each department are subject to the approval of the Budget Officer. The meaning

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of the word "approval" must be discussed.


In Gustafson v. Wethersfield Tp. High School Dist. 191, 49 N.E. 2d 311, the court stated,

"Generally when the "approval" of a distinct officer or body of officers is made necessary to validate, the act of another, the legislature intends that such officer or Board should be vested with discretion to sanction officially, or disapprove the acts submitted to him or them."

See also Harris v. Board of Education of Vance County, 4 S. E. 2d 331. These cases are helpful in determining just what the legislature meant by "approval" in Section 8-F. There are many cases on what the meaning of that word is in contexts like the one before us here. Baynes v. Bank of Caruthersville, Mo. App., 118 S.W. 2d 1051, serves to emphasize the above cases.

The words "approved" and "approval" when used in a statute requiring that a certain action meet with some designated approval, may merely contemplate the doing of a purely ministerial act.

See also Powers v. Iley, 183 P. 2d 880. The role of the Budget Officer under Section 8-F then, is to sanction or disapprove the proposed method of determining the total operating cost as drawn up by the Department of Mental Health and Corrections. Obviously the Budget Officer may make suggestions as to a method which will meet with his approval. Chapter 588 does require that any plan proposed by the Department be approved by the Budget Officer before it can be effective. It is equally clear that the Budget Officer has no authority to impose his own plan if he disapproves of a plan proposed by the Department of Mental Health and Corrections.

  
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WJK/vv