

# MAINE STATE LEGISLATURE

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November 3, 1972

Whitney Newcomb, Director, Division  
of Program Operations  
Craig H. Nelson, Assistant

Education  
Attorney General

Proposed Disciplinary Code for N.M.V.T.I.

You have requested that I review the enclosed proposed Disciplinary Code for Northern Maine Vocational Technical Institute (N.M.V.T.I.) as to its compliance with the law. You also indicated that, if the enclosed Code is found to be suitable, efforts will be made to implement similar codes at the other vocational technical institutes in the State.

Title 20 M.R.S.A. § 57, as amended by P.L. 1971, c. 610, § 21, provides that,

"In addition to its duties connected with vocational education, the Department of Educational and Cultural Services shall have authority to establish, maintain and operate state technical and vocational institutes to promote specialized training for persons who give evidence of special aptitude or need and who desire specialized training designed specifically to train for service in trade, industry or commerce."  
(Emphasis supplied.)

And 20 M.R.S.A. § 51 provides, in pertinent part, that,

"3. Powers. Notwithstanding any other provision of law, the State Board of Education shall have only the powers specifically stated in this subsection.

B. It shall be the responsibility of the State Board of Education for exercise the following specific powers and to perform the following duties in accordance with the statutes: . . .  
establish, maintain and operate state technical and vocational institutes and schools of practical nursing. . . ."  
(Emphasis supplied.)

NOT A FORMAL OPINION

In connection with the two (2) above-quoted sections, John W. Benoit, Jr., Deputy Attorney General, in his memo to Commissioner McGary of June 15, 1972, indicated that it would not, in his opinion, be unreasonable to read these sections together as providing that the State Board of Education (the Board) possesses authority to establish, maintain and operate State technical and vocational institutes and that this purpose be achieved within the Department of Educational and Cultural Services. Furthermore, although the pertinent statutes do not specifically so provide, it would seem reasonable to conclude that, as part of its authority to "establish, maintain and operate State technical and vocational institutes, the Board possesses the authority, by necessary implication, to promulgate such rules, regulations and disciplinary codes, etc. as it may deem reasonably necessary to carry out its statutory authority and duties. It does not appear, however, that, in the absence of a specific statutory provision, the Board has the authority to delegate such rule-making powers to individual Directors of the State vocational technical institutes. It, therefore, is recommended that any type of rule, regulation or disciplinary code that is adopted for the purposes of operating one or more State technical and vocational institutes be formally adopted by the State Board of Education. It is also suggested that an attempt be made to develop a uniform set of rules and regulations and a disciplinary code that may be adopted by the Board for use in the operation of all the State technical and vocational institutes.

In view of the foregoing observations and discussion, I do not believe that the subject Student Disciplinary Code for Northern Maine Vocational Institute, which by its provisions is to be adopted and amended by that Institute's Administration and Student Senate, complies with the laws of the State of Maine.

I am leaving the Attorney General's Office to practice law privately; however, should a decision be reached to follow the recommendations in this memo, I am sure that other members of this office will be happy to meet with you to discuss the development of a set of uniform rules and regulations and a uniform code of ethics.

I would take this opportunity to also advise you that Charles R. Larouche, Assistant Attorney General, has been assigned, in my place, to represent the defendants, in their respective official capacities, in the case of Carlton L. Spaulding et al v. Harold J. Mailman et al, which is now pending in the United States District Court for the District of Maine - Northern Division.

**NOT A FORMAL OPINION**

CRAIG H. NELSON

Assistant Attorney General