

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL

December 11, 1973

Ronald H. Lord
Assistant Finance Officer
Office of Legislative Finance
Augusta, Maine 04330

Dear Mr. Lord:

This is an informal opinion in response to your request dated December 5, 1973, wherein you ask the following two questions:

1. Can the Department of Mental Health and Corrections close Pine-land Hospital and Training Center or any institution (other than Women's Correctional Center) under the Department without approval of the Legislature?
2. Can the Department of Mental Health and Corrections discontinue certain programs within an institution, particularly Children's Psychiatric Hospital at Pineland Hospital and Training Center without legislative approval?

1. In answer to question 1, it is our opinion that in view of the creation or establishment by the Legislature of all institutions under the general supervision of the Department of Mental Health and Corrections (e.g., 34 M.R.S.A. § 2151, the Pineland Center; 34 M.R.S.A. § 2101, the Augusta Mental Health Institute and the Bangor Mental Health Institute; with similar provisions applicable to all of the other state institutions) the cessation of operation of any such institutions may only be at the instance of the Legislature. By 34 M.R.S.A. § 1, the Department of Mental Health and Corrections "shall have general supervision, management and control of the research and planning, grounds, buildings and property, officers and employees, and patients and inmates of all of the following state institutions: The hospitals for the mentally ill, Pineland Center, the State Prison, the Men's Correctional Center and the Women's Correctional Center, the Juvenile institutions, the Military and Naval Children's Home and such other charitable and correctional state institutions as may be created from time to time." No power is given by the Legislature to the Department of Mental Health and Corrections to terminate the operation of an institution established by the Legislature. We answer your first question in the negative.

NOT A FORMAL OPINION

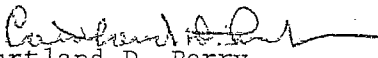
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2. In response to your second question, it is our opinion that it is discretionary with the Department of Mental Health and Corrections whether a program at an institution under its general supervision and control is discontinued as long as in such discontinuance the Department does not terminate a function which it is charged by the Legislature to carry out. Specifically as to the discontinuance of the Children's Psychiatric Hospital program at the Pineland Center without legislative approval, it is pertinent to cite 34 M.R.S.A. § 2151:

"Pineland Center, heretofore established at New Gloucester in the County of Cumberland, shall be maintained for the training, education, treatment and care of persons who are mentally retarded and of persons who are between the ages of 6 and 16, except as provided in section 2155, who are mentally ill."

By this statute it is seen that the Legislature has created as one of the functions of the Pineland Center the training, education, treatment and care of a certain class of mentally ill persons. If the discontinuance of the Children's Psychiatric Hospital is tantamount to the discontinuance of the maintenance of the Pineland Center for the provision of training, education, treatment and care of this particular class of mentally ill persons, then it can not be done without legislative action. If, however, the Department of Mental Health and Corrections, although discontinuing the Children's Psychiatric Hospital program, so-called, continues to maintain the Pineland Center function of providing the above-cited services to this class of mentally ill persons, then it remains a matter entirely within the administrative discretion of the Department.

Very truly yours,


Courtland D. Perry
Assistant Attorney General

CDP/a

NOT A FORMAL OPINION