

MAINE STATE LEGISLATURE

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January 2, 1974

Superintendent, Maine Maritime Academy

Maine Maritime Academy

Charles R. Larouche, Assistant

Attorney General

- (1) Agreement for operation of Tavern and Restaurant;
- (2) Student Motor Vehicle Parking

This replies to your memo of December 18, 1973 concerning the operation of a tavern-restaurant and motor vehicle regulation.

Your first question is construed to ask whether or not we would approve the draft agreement as to form and legality. The answer to that question is negative. The proposed agreement provides that the Academy will assume all the risks and obtain all the profits from the operation of the tavern-restaurant. By letter of August 21, 1973, to Captain Brennan, the Attorney General advised the Academy that it could not engage in such a business. The assumption of all risks and profits would seem to constitute the engagement in such business. Furthermore, the draft agreement would violate 28 M.R.S.A. §203, which prohibits a licensee from assigning any interest in the license privilege.

Your second question asks to what extent the Academy can regulate the use of motor vehicles. Section 2 of the Academy charter provides:

"Said trustees shall provide and maintain a nautical school for the instruction of students in the science and practice of navigation and in practical seamanship, steam, diesel and electrical engineering, radio and radio communication, and of ship operation, ship construction and ship and boat design, provide books, stationery, apparatus and other supplies and equipment needed in work thereof. The board may appoint and remove necessary instructors and other employees, determine their compensation, fix the terms upon which students shall be received and instructed therein and discharged therefrom, and make all regulations convenient or necessary for the management of said school and provide from time to time for actual sea experience for its students."

The critical question is whether or not the proposed regulations are authorized by the legislative grant of power to "make all regulations convenient or necessary for the management of said school." Since we have not been presented a copy of the proposed regulations nor a statement of the reasons for and purposes of each of the regulations, we can not provide a firm and definitive response. However, based upon the limited information available, it would seem at this time that the answer must be negative.

While Section 2 of the Charter clearly confers upon the Board of Trustees broad discretionary power to regulate the management of the school, it would seem to be an inordinate construction of the legislative grant of authority to read into it an intent to authorize the Board to:

1. Limit the otherwise lawful off-campus activity of the student, e.g., restricting students from keeping motor vehicles in Castine, off Academy property and requiring them to be kept solely on Academy property.

2. Enact compulsory motor vehicle insurance as a condition to use motor vehicles on Academy property.

3. Enact a motor vehicle penal code providing for monetary fines for unauthorized parking and for towing away of unauthorized vehicles.

The power to restrict otherwise lawful activity should not be lightly inferred. As stated by the Supreme Judicial Court of Maine in City of Auburn v. Paul 110 Me. 192, 202:

"The rule of construction ---- is as follows: 'The powers that are given to subordinate local authorities are strictly construed, and every reasonable doubt as to the existence of a particular power resolved against the same, - - - -'."

In Small v. Maine Board of Reg. & Exam. in Optometry, Me., 293 A 2d, 786, the Court said:

"The determination as to what constitutes proper administrative implementation of legislative policy and what amounts to improper administration legislation is by no means an easy task."

The Court summarized the governing principles as follows:

"From the constitutional prohibition of the delegation of legislative powers, two fundamental concepts emerge: "(1) the legislature may not confer a discretion as to what the law shall be but it may confer discretion in the execution of administration of the law; and (2) the legislature must declare a policy and fix a standard in enacting a statute conferring discretionary power upon an administrative agency, but the agency may be authorized to 'fill up the details' in promoting the purposes of the legislation and carrying it into effect.

"In order to avoid an unlawful delegation of power, the legislative authority must declare the policy or purpose of the law and, as a general rule, must also fix the legal principles which are to control in given cases by setting up standards or guides to indicate the extent, and prescribe the limits, of the discretion which may be exercised under the statute or ordinance by the administrative agency. Otherwise, the law may be construed as vesting an uncontrolled discretion and held to violate the inhibition against delegation of legislative powers."