

MAINE STATE LEGISLATURE

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Department of Health and Welfare *yes*

J.B. Wetherill
STATE HOUSE, AUGUSTA, MAINE

Date March 25, 1974

To Dean Fisher, M.D., Commissioner, Department of Health and Welfare
Attention of Freda L. Plumley, Consultant, Substitute Care
From Harrison B. Wetherill, Jr., Assistant Attorney General
Financial Responsibility for Children Committed to the Department of Health and
Subject Welfare Who are Subsequently Committed to Boys Training Center or to Stevens School

Note: Use of the word "center" in the below opinion refers to Boys Training Center or the Stevens School.

SYLLABUS:

Whenever a child who has been committed to the Department of Health and Welfare is subsequently committed to a center, entire responsibility, financial and otherwise, for the care and custody of such child is transferred to the center until discharge of the child from such center. Entrustment of a child by a center to the care of a suitable person or to the care of a public or private agency does not constitute a discharge and responsibility for maintenance during the period of entrustment remains with the center.

FACTS:

Under 22 M.R.S.A. § 3793, "the...department of Health and Welfare... to which a child is committed shall have full custody and control over said child thereafter for said time and, if no other guardian is appointed, the department shall have all the powers as to the person, property, earnings and education of every child committed to its custody during the term of commitment which a guardian has as to a ward..."

Further, under 22 M.R.S.A. § 3792, "the expense of any care provided for any child committed to the department of Health and Welfare under 22 M.R.S.A. § 3792 shall be paid by the department".

Under 15 M.R.S.A. § 2716, "The superintendent of a center shall have all the power which a guardian has to his ward, and all powers which parents have over their children, as to the person, property, earnings, and the rehabilitation of every child committed to the center.". This section was amended in 1968 by the addition of the following: "When...custody of a child, at the time of his or her commitment to a center is in the Department of Health and Welfare, such custody shall be temporarily suspended while the child is in a center. Upon termination of custody of the child by the center, by discharge, the custody of the child shall revert to the Department of Health and Welfare if the child is still under 18 years of age."

QUESTIONS:

1. Which agency has financial responsibility for a child committed to the Department of Health and Welfare who is subsequently committed to a center?
2. If the Department of Health and Welfare does not have financial responsibility for such a child:
 - a. When does the Department's financial responsibility resume?
 - b. May the department legally expend monies toward the care and custody

QUESTIONS: (con't.)

of such a child, if it should choose to do so, despite the fact that legal responsibility for such care and custody is vested in a center?

ANSWERS:

1. The center.

2a. Only upon final discharge from the center; release on an entrustment basis does not constitute a discharge.

2b. Yes.

REASONS:

P.L. 1967 chapter 506 amended 15 M.R.S.A. § 2716 to do away with the possible conflict, which might have existed prior to 1968, between the Department of Health and Welfare and the Department of Mental Health and Corrections as to which agency is responsible for care and custody of a committed child.

The apparent intention of the amendment was to ensure that no more than one agency of state government would be responsible as a guardian for a single child at any one time.

The amendment calls for return of custody to the Department of Health and Welfare only after discharge by a center.

In order to effectuate the purpose of the amendment, discharge, as used therein, must mean an absolute release with no further powers over the child being retained in the center. The discharges described in 15 M.R.S.A. § 2718 would constitute such absolute releases. Under an entrustment release, on the other hand, the center retains broad powers over a committed child. Regular reports must be submitted to the center on the child's progress and the center can have the child recommitted without a hearing. To reinvest the Department of Health and Welfare with the responsibilities of custody and care for a child on an entrustment release from a center would divide responsibility for the child contrary to the intent of the 1968 amendment.

If a child who has been committed to a center is placed on an entrustment release and the center requests financial or other assistance from the Department of Health and Welfare toward the care and custody of the child during the period of entrustment, the Department, though not bound to provide such assistance, may legally provide the assistance requested if it should choose to do so. The first responsibility for care and custody of such a child is, as explained above, vested in the center until final discharge and the Department's role in assisting in such care and custody is entirely voluntary.

Statutory authorization for the Department of Health and Welfare to contribute toward the support of children who have not been formally committed to its custody is found in 22 M.R.S.A. § 3794 which reads, in part, as follows: "At the request of the parents or next friend of any dependent child under 18 years of age who is without parent or grandparent of sufficient ability, or without other relatives able and willing to provide for its care, the department of Health and Welfare may make provision, without intervention of court, for the care of such child." (Emphasis mine).

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In any request for assistance made under this provision by a center to the department, which request may be denied or granted within the discretion of the department, the center would be acting as the next friend of the child involved.