

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date December 4, 1975 ✓

To Joseph E. Stephenson, State Dept. Bureau of Purchases
Purchasing Agent

From Martin L. Wilk, Deputy Dept. Attorney General

Subject State Records Regulations Promulgated by the State Archivist

This will respond to your memorandum dated November 13, 1975, inquiring whether the State Purchasing Agent is required to comply with the regulations promulgated by the State Archivist effective November 1, 1975, relating to procurement of filing equipment. You indicate that various bureaus and agencies have questioned the validity of the regulations and expressed particular concern with Section 2.05 which provides for fine or imprisonment in the event the regulations are violated.

For the reasons which follow, it is our opinion that the State Archivist does not have the authority to promulgate regulations which would compel State agencies to seek his prior approval for the acquisition of equipment and supplies employed in maintaining and storing records within their own agencies prior to transfer to the custody of the Maine State Archives for permanent storage, although the Archivist does have authority to prescribe the kinds of containers in which records are presented to Archives for permanent storage.

The regulations purport to prescribe procedures to govern the proposed acquisition of equipment, supplies and services for creating, maintaining, storing, servicing and disposing of records of State agencies (Regulation 1.00). Section 4.00 of the Regulations provides as follows:

"No records, equipment, supplies or services specified in this section shall be procured or acquired by purchase or lease by any state agency unless the proposed acquisition of such equipment, supplies or services has been approved by the Maine State Archives as necessary and feasible to accomplish the work to be done."

There is no underlying statutory authority for this provision, and it is therefore without force or effect. Maine Turnpike Authority v. Brennan, 342 A.2d 719, 723-724 (1975).

The statutes setting forth the Archives and Records Management Law are contained in 5 M.R.S.A. §§ 91-97. Section 92(A) of the Act distinguishes between those records of government agencies which are in custody of the various agencies and those which have been physically transferred to the custody of the Maine State Archives as follows:

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"Agency records 'means semi-current records of government agencies to which they retain legal title, but that have been transferred to the custody of the Maine State Archives to affect economies and efficiency in their storage and use pending their ultimate disposition as authorized by law.' (Emphasis added)

The statutes authorize the State Archivist to establish and administer in the Executive Branch of State Government an active continuing program for the economical and efficient management of State records. 5 M.R.S.A. § 95(7). The statutes further provide that in administering this program, the State Archivist shall have due regard for the functions of the agencies concerned and shall recommend improvements in the use of equipment and supplies.

Rather than conferring authority upon the State Archivist to require State agencies to purchase only that kind of equipment which meets with his approval, the statutes merely establish the State Archivist with advisory authority in this area as follows:

"The State Archivist shall with due regard for the functions of the agencies concerned. . . recommend improvements in current records management practices, including the use of space, equipment and supplies employed in creating, maintaining, storing and servicing records." 5 M.R.S.A. § 95(7)(b).

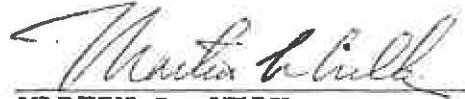
It is true that the statutes require the head of each agency to maintain a program for the economic and efficient management of records of the agency "in compliance with the standards, procedures and regulations issued by the State Archivist." 5 M.R.S.A. § 95(7). However, these requirements relate to the management of records and not to the acquisition of equipment and supplies. With respect to the latter the agencies and the State Purchasing Agent have such authority as is conferred upon them by their respective statutes.

With specific reference to that portion of the regulations which imposes a fine or imprisonment for violation of the regulations, 5 M.R.S.A. § 97 provides as follows:

"Whoever violates any provision of this chapter or rules and regulations issued under Section 95, Sub-section 3, excepting only those violations for which specific penalties are provided, shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$100 nor more than \$500 whereby imprisonment of not more than 90 days or by both."

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Since the regulation merely repeats the statutory provision verbatim as it applies to the rules and regulations of the Archivist, the provision is proper. However, to the extent the regulations purport to impose requirements beyond the statutory authority of the State Archivist, as indicated above, they are without force and effect, and the State Purchasing Agent and the State agencies may govern their conduct accordingly.


MARTIN L. WILK
Deputy Attorney General

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