

MAINE STATE LEGISLATURE

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May 24, 1976

Honorable Kathleen Watson Goodwin
409 High Street
Bath, Maine 04530

Re: Maine Committee on Aging

Dear Representative Goodwin:

You have requested our opinion concerning several aspects of the staffing and fiscal procedures presently utilized by the Maine Committee on Aging. The questions initially raised in your letter of January 30, 1976, have been the subject of several subsequent meetings involving, at one time or another, yourself, Ms. Trish Riley--Staff Director of the Committee, Assistant Attorney General Thomas E. Geyer, and me. This letter serves to confirm the comments Mr. Geyer and I made during those meetings and to provide the opinion you have requested.

The present staffing and fiscal procedures of the Committee are rather complex and interrelated. Our understanding of the over-all fiscal position of the Committee, as it was explained to us, is set forth in a memorandum which is enclosed with this letter for your information. The position with regard to State funding for the Committee, at least for FY's 1974 and 1975, may be characterized as turning over appropriated State funds to a private non-profit corporation for administration pursuant to a "contract." The corporation, The Western Older Citizens Council, Inc., deposits and administers the funds, making disbursements as requested by the Committee and retaining any accrued interest on the funds in lieu of fee for administration. The "contract" describes the Council as the ". . . sole depository of funds of [the] Committee." As part of this administration, the Council has provided all of the staff for the Committee, paid primarily from the State funds which the Council holds. None of the staff members are presently employed under provisions of law governing the State's classified or unclassified service. It is our opinion that this situation presents serious legal problems in two areas.

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The Committee has the power and duty to "Administer in accordance with current fiscal and accounting regulations of the State, and in accordance with the philosophy, objectives and authority of [the statute], any funds appropriated for expenditure by the Committee or any grants or gifts which may become available, accepted and received by the committee." 22 M.R.S.A. § 5112, sub-§ 8 (emphasis supplied). In our opinion the method being utilized to administer the Committee's funds is not authorized by statute and is contrary to "current fiscal and accounting regulations of the State," as set forth in the State's Manual of Financial Procedures. "The Committee is authorized to employ consultants and contract for such projects as it deems necessary." 22 M.R.S.A. § 5111. However, this authority cannot be extended as far as contracting with a private corporation for the complete administration of the Committee's finances and, in effect, its day-to-day operations. Furthermore, the "contract" between the Committee and Council is not in the form prescribed by the State for service contracts, was not approved by this office, and was not reviewed by the Contract Review Committee. In our opinion the "contract" is void and any remaining funds being held by the Council should be recovered by the Committee for its own administration in accordance with appropriate State procedures. It might be added that the presence of the names of two members of the Committee on the list of the Council's officers and directors which is filed with the Secretary of State, does not improve the legal status of the present arrangement.

The Committee also ". . . is authorized to employ, subject to the Personnel Law, such staff as is necessary to carry out its objectives." 22 M.R.S.A. § 5111 (emphasis provided). It is our understanding that at the present time all members of the Committee's staff are actually employees of the Council, receiving all salaries and other compensation from that source. This situation is not only clearly contrary to the direction of the statute that the staff be "subject to the Personnel Law," but it also creates serious problems concerning liability for acts of these staff members, especially if they have been authorized to enter residential facilities to investigate complaints pursuant to 22 M.R.S.A. § 5112, sub§ 2. It is our opinion that the present staffing arrangement is contrary to the statute and that appropriate action should be taken to bring the staff members within the State Personnel Law. We would suggest that the Department of Personnel may be able to assist you in this regard.

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In summary, it is our opinion that all funds made available to the Committee on Aging from all sources should be administered by the Committee itself through its own staff. This administration should follow State fiscal procedures and no funds should be placed in the hands of private individuals or organizations unless the funds are consideration for contractual consulting services or projects, as authorized by statute. The regular staff of the Committee should be State employees; additional persons may be retained as consultants or as part of a contracted project. All contracts should conform with State procedures, as set forth in the Manual of Financial Procedures.

Please continue to call on us whenever we may be of assistance.

Sincerely,

S. KIRK STUDSTRUP
Assistant Attorney General

SKS:mfe

cc: Ms. Trish Riley - Maine Committee on Aging

STATE OF MAINE

Inter-Departmental Memorandum Date March 8, 1976

To File - Maine Committee on Aging

Dept. _____

From S. Kirk Studstrup, Assistant

Dept. Attorney General

Subject Analysis of Funding and Staffing Provisions

I met this morning with Representative Kathleen Goodwin and Tricia Riley, Staff Director of the Maine Committee on Aging. The meeting was intended to give me a better idea of the funding and staffing provisions of the Committee in order to better advise them on the legality of their actions. The information I received is as follows:

I. Sources of Funding.

A. From the State - in accordance with P.L. 1973, Chapter 630, the Bureau of Maine's Elderly was appropriated \$125,000 each for the years 1973-74 and 1974-75. Included in these funds was \$50,000 for "transportation services and funds for the work of the Committee on Aging." The entire \$50,000 was transferred by the Bureau to the Western Older Citizens Council, a nonprofit private organization headquartered in Wilton, Maine, for its administration on behalf of the Committee on Aging. The Committee signed a contract with the Western Older Citizens Council, however, the Committee never directly received the State appropriated funds from the Bureau. There was apparently never any documentation of this transfer of money from the Bureau to the Council other than the contract between the Committee and the Council. Western Older Citizens Council (WOCC) has deposited these funds and retains the interest accumulating thereon as a charge for its administration services. WOCC also maintains the financial ledgers and books for the Committee.

B. Federal Funds -

1. The Bureau of Maine's Elderly has received a block grant from the Federal Government pursuant to Title 3 of the Older Americans Act. The Bureau has discretion as to the allocation of these funds within the appropriate guidelines. Part of this block grant has been allocated to WOCC in the following amounts: 1973-74 \$43,000; 1974 \$53,000; 1975 \$50,000. Of these funds part has paid for the planning and administration of WOCC and part has been used by WOCC for staff, etc. for the Committee on Aging (in 1974 this amount was approximately \$33,500).

2. In 1975 \$18,000 in federal funds were granted to the Bureau for an Ombudsman Project which expires in June of 1976. The project was designed and is administered by the Committee on the basis of its general authority to act as an advocate for the elderly and enter into nursing homes in response to complaints. However, the grant funds were channelled by the bureau into WOCC and it is this group which actually holds the funds to finance this project.

II. Expenditures

A. Bureau of Maine's Elderly - The Bureau supplies to the Committee on Aging, without any formal agreement or contract, office space, telephone facilities, expenses of the Committee members (per diem, travel expense, food, lodging, etc.), conference expenses, and publications, such as newsletters. These day-to-day operational expenses are apparently not included in the \$50,000 which was appropriated to the Bureau for use in support of the Committee.

B. WOCC -

1. Day-to-day operational expenses which are not reimbursed by the Bureau of Maine's Elderly are reimbursed by WOCC pursuant to their contract with the Committee. The Committee sends its bills directly to the accountant for the Bureau and those which the Bureau does not pay are then forwarded to WOCC.

2. WOCC also pays the salaries of the Committee staff. This staff is not subject to the state personnel laws and the members are not state employees.

3. Members of the staff - the staff director, the research assistant, and a secretary - are paid from the \$50,000 which WOCC administers for the Committee. A fourth staff member - the Ombudsman - is funded from the \$18,000 federal grant for the Ombudsman project. A fifth staff member - a volunteer coordinator - is funded in part from the \$50,000 state appropriation and in part from the Ombudsman Fund. The sixth staff member is a project director for the project described immediately below. Funding for this position comes from the \$50,000 state allocation.

4. WOCC also provides funds for "Steps for Maine's Elderly." This research is being conducted by the University of Maine pursuant to a contract between the University and WOCC. Although WOCC is the contracting party, the Committee on Aging is named in the contract as the contract administrator. The contract calls for payments to the University of \$36,657, which has been taken from the \$50,000 of state funds which were allocated for the Committee and which have been held by the WOCC. However, additional funds have been added so that the entire contract project now is in the neighborhood of \$40,000.