

MAINE STATE LEGISLATURE

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Human Services: Belfast Office
Department of Human Services

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STATE HOUSE, AUGUSTA, MAINE

Date July 21, 1976

To Raymond H. Swift, Deputy Commissioner, Department of Human Services
From Thomas E. Geyer, Assistant Attorney General *T.E.G.*
Subject FORMAL OPINION INTERPRETING L.D. 2336, RESOLVE TO REQUIRE THE DEPARTMENT OF HUMAN SERVICES TO REOPEN THE ITINERANT OFFICE IN BELFAST

SYLLABUS:

L.D. 2336 of the Special Session of the One Hundred and Seventh Legislature requires the Department of Human Services to reopen its Belfast office in order to provide services to the public in that area commensurate with services provided in other areas of the State.

FACTS:

On January 28, 1976, the Department of Human Services closed its branch office in Belfast. Pursuant to H.P. 2014, the Committee on Health and Institutional Services conducted a study of the effect of this closing on the Belfast area, and reported that the closing had adversely effected services for the department's clients in and around Belfast. The Legislature subsequently enacted L.D. 2336, a resolve requiring the Department of Human Services to reopen its itinerant office in Belfast.

QUESTIONS & ANSWERS:

1. Should the department treat L.D. 2336 as one year funding and thereby restrict itself to a one year or tenant at will lease? NO.

2. Should the department establish the Belfast office based on current needs or on needs as they existed in January, 1976?

The type of office established should be based initially on current needs, subject to alteration if there is a change in the needs of the public.

3. In equipping the Belfast office, is the department prohibited from using equipment available elsewhere or using less equipment than before? NO.

4. Can the staff be itinerant, or must they be stationed permanently in Belfast? The staff can be itinerant or permanent.

REASONS:

1. The department is not bound by L.D. 2336 to keep the Belfast office open indefinitely. However, the department should not treat this resolve as a one year funding. The office should be maintained as long as the needs of the public in the Belfast area justify its existence. Leasing, therefore, should be treated as other leasing arrangements in other branch offices. The department may, as in other instances, negotiate for a long-term or one year lease, or function as a tenant at will.

2. Since needs of the public in a particular area may fluctuate because of changing economic conditions and other factors, the department should establish the Belfast office based on current needs, and not necessarily on needs as they existed in January, 1976.

3. As regards office equipment, the Legislature directed that the department "provide the necessary equipment," i.e., equipment necessary to provide the department's services. If the department can fulfill this function with equipment available in another office, or with less equipment than the office had prior to its closing, then the department may do so.

4. Staffing, again, is a purely administrative function, limited solely by the language in the first paragraph of the resolve, which requires that the staff include, but not be limited to, "public health nurses, food stamp workers and vocational rehabilitation workers." Whether or not the staff is itinerant or full time is a decision which is administrative rather than legislative in nature. If an itinerant staff, including public health nurses, food stamp workers and vocational rehabilitation workers, can provide the necessary services, then such a staffing arrangement is permissible.

Specific answers to the preceding questions are based generally on an interpretation of the Legislature's intent in enacting L.D. 2336. This intent is clearly indicated in the third and fourth paragraphs of the emergency preamble, which read as follows:

"Whereas, the committee has found that the closing of the Belfast office has had an adverse effect on services for the department's clients in the Belfast area; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety..."

It is obvious from the foregoing language of the preamble that the broad intent of the Legislature was for the Department of Human Services to provide the same quality and quantity of services to the public in the Belfast area, which the department provides in other areas of the State. Aside from listing three categories of workers which should be included as part of the office staff, the Legislature did not detail how the office should be administered. Therefore, a mandate such as L.D. 2336 carries with it the implication that the department has the administrative authority to do what it sees fit in carrying out the general purpose of the legislation, provided that any action taken by the department does not tend to frustrate or otherwise impair or avoid that purpose.

TEG:bjw