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34 M.R.S.A. §1
34 M.R.S.A. §3051

State Buildings Private Use Copy in Informal Opinion
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DEPARTMENT OF THE ATTORNEY GENERAL

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Memo From

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COUNSEL, MENTAL HEALTH & CORRECTIONS

Date: 26 July 1976

To: John Wakefield, Associate Commissioner Dept. Mental Health and Corrections

Subject: Authority of Department of Mental Health and Corrections to Permit Private Use of
Gymnasium at Former Stevens School

This is an informal memorandum in answer to your inquiries relative to the authority of the Department of Mental Health and Corrections to permit private use of the gymnasium on the grounds of the former Stevens School.

The Department of Mental Health and Corrections has received numerous requests from civic organizations and social groups in Hallowell, to be allowed to use the gymnasium. In this connection, the Department has asked the following questions:

1. "Does the Department, by statute, have the authorization to allow civic or other groups to use the gymnasium?"
2. "If the Department does have the authorization to grant requests to use the Stevens' gymnasium, does it have the authority to charge fees to cover the costs of operations?"
3. "Is the State liable for personal injuries or property damage on citizens using this facility?"

Your first question is answered - No, if the intended use of the gymnasium is solely for the purposes of the civic organization or social group and bears no relationship to the functions and programs of the Department of Mental Health and Corrections. Your second question is answered - Yes, if the use of the gymnasium intended by the civic organization or social group is in the furtherance of statutory functions and purposes of the Department, applying the reasoning set forth below.

The Department of Mental Health and Corrections has no express authority by statute to permit the use of buildings which are under its control. We must, therefore, look at the general statutory authority of the Department over such buildings and, at the purposes and functions of the Department and apply to these, recognized principles of statutory construction. 34 M.R.S.A. §1 provides in pertinent part as follows:

"The Department of Mental Health and Corrections, as heretofore established, hereinafter in this Title called the 'department,' shall have general supervision, management and control of the research and planning, grounds, buildings and property, officers and employees, and patients and inmates of all of the following state institutions: The hospitals for the mentally ill, Finland Center, the State Prison, the Maine Correctional Center, the Maine Youth Center, the Military and Naval Children's Home and

such other charitable and correctional state institutions as may be created from time to time."

34 M.R.S.A. §3051 as enacted by P.L. 1975, Chapter 756 §23 provides in pertinent part as follows:

"The Department of Mental Health and Corrections shall have control over the facility formerly known as the Stevens School located in Hallowell."

The latter section also provides that the Commissioner of Mental Health and Corrections, with the approval of the Governor, may establish a residential facility for children with severe emotional, mental and behavioral disturbances which may be located on the site of the institution formerly known as the Stevens School. This statute contemplates the provision of a broad range of services upon establishment of the children's residential facility.

34 M.R.S.A. §2 provides:

"The department shall have authority to perform such acts, relating to the care, custody, treatment, relief and improvement of the inmates of the institutions under its control, as are not contrary to law."

The exercise of the general authority set forth in the above statute is to be measured by application of the following tests:

"Public bodies may exercise only that power which is conferred upon them by law. The source of that authority must be found in the empowering statute, which grants not only the expressly delegated powers, but also incidental powers necessary to the full exercise of those invested...An authorizing statute grants such powers as may be fairly implied from its language. These powers are:

1. those necessarily arising from powers expressly granted
2. those reasonably inferred from powers expressly granted
3. those essential to give effect to powers expressly granted.

The public body may employ means appropriate for the purpose of carrying out the authority directly conferred upon it." State v. Fin & Feather Club, 316 A. 2d 351 at 355 (Me. 1974).

It is my opinion that, the Department in permitting the use of a building at one of the institutions under its control, such as the gymnasium at the former Stevens School, must employ a device which does not vest in the user any estate in the building, such as might be conveyed by a lease. The Legislature has not given this power to the Department. (See Opinion of the Attorney General, August 24, 1959). The device which may be used by the Department in effecting such a grant of use is a license revocable at will. By way of example, such license device has been employed by the Department in previous instances cited below.

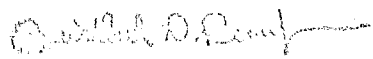
1. A license to the Depositors Trust Company to use space at the Augusta Mental Health Institute for the purpose of operation of a branch bank for the benefit of the residents of the Augusta Mental Health Institute; this has been considered by institutional administration as a valuable therapeutic tool in assisting institute residents in achieving greater independence.
2. A license granted to individuals to permit grazing or cutting of hay on the grounds of the Bangor Mental Health Institute and the Pineland Center; these licenses were undertaken in the interest of the good husbandry of farm lands at these institutions which are not being used by the institutions, each undertaken in the "management of the grounds" of such institutions.
3. A license to the Kennebec Valley Mental Health Association to permit the use of a building at the Augusta Mental Health Institute as a halfway house; under this license, the Association provided halfway house services to residents of the Mental Health Institute and such services generally in conjunction with Kennebec Valley Mental Health Clinic, all within the broad responsibilities of the Department under 34 M.R.S.A. §2001.

If the civic organizations or social groups whose requests have given rise to the Department's inquiry of this office are asking to use the gymnasium for a purpose within the general authority of the Department as measured by the above test, such use would be appropriate.

In answer to your second question, I am of the opinion that the Department could charge a fee when it grants a license for the use of the gymnasium at the former Stevens School; however, such charge would not assist the Department in defraying costs of operations incurred in connection with such permitted use, since any such fees must be deposited with the Treasurer of State and would become part of the General Fund and not part of the operating budget of the Department. 5 M.R.S.A. §131.

Your question three as to liability of the State for personal injuries or property damage incurred through the permitted use of the gymnasium at the former Stevens School, is answered in the negative. The Doctrine of Sovereign Immunity from liability obtains Austin W. Jones Company v. State, 122 Me 214 (1923). In the event of personal injury or property damage resulting from a permitted use of the gymnasium, there being no other statutory provision applicable, the injured person could file a claim with the Governor and Council in an amount up to \$2,000 pursuant to 5 M.R.S.A. §1510. The injured person might file a bill with the Legislature seeking either direct reimbursement for injury or the authority to bring suit against the state.

I suggest that any grant of a license permitting the use of the gymnasium contain a "hold harmless" clause through which the licensee will assume responsibility for personal injuries and property damage and will hold harmless the State and its officers and agents from any such liability.



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GDP/vv

per W. J. Kelleher
R. G. Howard
✓ Donald Alexander
Commissioner Rossier