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Bangor Mental Health Inst. Closing

34 M.R.S.A. 2373

STATE OF MAINE 34 M.R.S.A. 2333

34 M.R.S.A. 2101

Inter-Departmental Memorandum Date September 10, 1976

John Rosser, Commissioner

Dept. Mental Health and Corrections

From Joseph E. Brennan, Attorney General

Dept. Attorney General

Subject Bangor Mental Health Institute

FACTS:

The Department of Mental Health and Corrections is considering the advisability and legality of closing the Bangor Mental Health Institute. In this connection, consideration is being given to transfer of patients and funds to the Augusta Mental Health Institute, The Counseling Center, located in Bangor, Maine, and to the Aroostook Mental Health Center. The latter two entities are privately operated, non-stock corporations providing treatment for the mentally ill on a largely out-patient basis. Investigation reveals that the latter two corporations are negotiating with the Department of Mental Health and Corrections in connection with each of them developing a capability, should funding be made available by the State, to provide in-patient care for mentally ill individuals currently patients at the Bangor Mental Health Institute. Accordingly, the Commissioner of Mental Health and Corrections has submitted the following request for an Opinion of the Attorney General.

QUESTIONS:

"Given the decision concerning the future role of Bangor Mental Health Institute, will you please provide me with an opinion concerning:

"1. The administrative decisions which can be made without legislative approval regarding the movement of patients, funds, programs from Bangor Mental Health Institute to such sites as Augusta Mental Health Institute, Bangor Counseling Center and/or Aroostook Mental Health Center.

"2. Which decisions must be made by the legislative (sic) and which transfers can be made by administrative action."

ANSWER:

Officials of the Department of Mental Health and Corrections may transfer patients of the Bangor Mental Health Institute to the Augusta Mental Health Institute or to any other facility providing in-patient care and treatment of the mentally ill, including such facilities as may be operated by The Counseling Center or the Aroostook Mental Health Center, in accordance with the provisions of 34 M.R.S.A. § 2373.

Monies appropriated by the Legislature to the Department of Mental Health and Corrections for the maintenance of the Bangor Mental Health Institute and not needed for such purpose may be transferred in accordance with the provisions of 5 M.R.S.A. § 1585 for use in maintaining the Augusta Mental Health Institute but may not be transferred to the use of The Counseling Center or the Aroostook Mental Health Center.

The Bangor Mental Health Institute may not be closed without specific legislative authority. The Department of Mental Health and Corrections must maintain the Bangor Mental Health Institute for the emergency care and treatment of the mentally ill. It is required to admit and provide care for all persons in need of emergency care and treatment whose admissions are applied for in accordance with 34 M.R.S.A. § 2333, subject only to the availability of accommodations made possible through legislative appropriations for the maintenance of the Bangor Mental Health Institute.

REASON:

We construe your first question to ask what are the perimeters of the authority of the officials of the Department of Mental Health and Corrections to (1) transfer patients of the Bangor Mental Health Institute to the Augusta Mental Health Institute, to The Bangor Counseling Center and to the Aroostook Mental Health Center; (2) transfer funds appropriated to the Bangor Mental Health Institute to the Augusta Mental Health Institute, to The Bangor Counseling Center and to the Aroostook Mental Health Center; (3) transfer programs from the Bangor Mental Health Institute to the Augusta Mental Health Institute, to The Bangor Counseling Center and to the Aroostook Mental Health Center? We will address each of these questions in sequence.

The authority of the Department of Mental Health and Corrections to transfer patients from the Bangor Mental Health Institute or the Augusta Mental Health Institute to another hospital is set forth in 34 M.R.S.A. § 2373. The applicable definition of "hospital" is set forth in 34 M.R.S.A. § 2251(3), viz: "'Hospital' means a public or private hospital or institution or part thereof, equipped to provide in-patient care and treatment for the mentally ill. For the purpose of (chapter 191), inpatient care and treatment in a mental health center shall be included within the definition of hospital." Section 2373 requires, prior to any transfer, that the department determine "that it would be consistent with the medical needs of the patient to do so." Consideration must also be given by the department to the patient's relations with "his family, legal guardian or friends so as to maintain relationships and encourage visits." We advise, therefore,

that patients admitted to the Bangor Mental Health Institute may be transferred in accordance with the provisions of § 2373 to the Augusta Mental Health Institute, and to other in-patient units for the care of the mentally ill, including those operated by The Counseling Center and Aroostook Mental Health Center.

Section 1585 of Title 5 of the Maine Revised Statutes provides:

"Any balance of any appropriation or subdivision of an appropriation made by the Legislature for any state department or agency, which at any time may not be required for the purposes named in such appropriation or subdivision, may, upon the recommendation of the department or agency head concerned and the State Budget Officer, be transferred by the Governor and Council at any time prior to the closing of the books, to any other appropriation or subdivision of an appropriation made by the Legislature for the use of the same department or agency for the same fiscal year."

We find no other authority under which the Department of Mental Health and Corrections could transfer monies appropriated by the Legislature to the Department of Mental Health and Corrections for the operation of the Bangor Mental Health Institute. Should the relevant authorities named in Section 1585 so authorize, monies not needed for the operation of the Bangor Mental Health Institute could be transferred to the appropriate appropriation for the operation of the Augusta Mental Health Institute but not for use by The Counseling Center, a non-stock corporation, and the Aroostook Mental Health Center, another non-stock corporation, neither of the latter two organizations being part of the Department of Mental Health and Corrections.

We are unable to answer what we perceive to be the third part of your first question concerning the transfer of "programs." If you would furnish us with specific information concerning the proposed transfer of "programs," we will be pleased to respond.

Your second question, while broad, appears to ask to what extent the operation of the Bangor Mental Health Institute may be reduced without legislative approval. We emphasize that the Bangor Mental Health Institute is a creation of the Legislature. Section 2101 of Title 34 of the Maine Revised Statutes provides, "The State shall maintain 2 hospitals for the mentally ill, one at Bangor called the Bangor Mental Health Institute and the other at Augusta, called the Augusta Mental Health Institute." While the Legislature does not define what it means by the term "hospital" as

used in chapter 185, within which § 2101 appears, it does provide such a definition in chapter 191 wherein the provisions for the hospitalization of the mentally ill are set forth. Section 2251(3), quoted above, when read together with § 2101, makes clear that the Bangor Mental Health Institute was created by the Legislature to provide in-patient care and treatment for the mentally ill. This office has had occasion in more than one instance to advise that the closing of a legislatively created state institution may only be at the instance of the Legislature.^{1/} The above-discussed statutes together with the provisions of 34 M.R.S.A. § 1, clearly require the Department to maintain the Bangor Mental Health Institute for the care and treatment of the mentally ill.

Section 2102 provides, in pertinent part, that, "The superintendent (of each hospital created by the Legislature in § 2101). . . shall receive all patients in need of special care and treatment, legally sent to the hospital, that the accommodations permit, subject to the regulations of the department." Inasmuch as the provisions relating to the civil admission of the mentally ill are contained within chapter 191, we are of the opinion that the above-quoted reference to patients in need of special care and treatment set forth in § 2102, refers to those patients whose emergency admission is applied for in accordance with § 2333. We are of the opinion that the Legislature has therefore mandated that the Bangor Mental Health Institute (as well as the Augusta Mental Health Institute) have an ongoing capability, subject only to the availability of accommodations, to receive all persons in need of emergency care and treatment whose admissions are applied for in accordance with § 2333. The Legislature, through its appropriations, provides funding which makes possible a certain level of accommodations for the care and treatment of the mentally ill at the Bangor Mental Health Institute. We are of the opinion that it would be a violation of the legislative intent in enacting § 2101 for the Department of Mental Health and Corrections to refrain from utilizing portions of monies so appropriated so as to reduce available accommodations at the

^{1/} See advise of William J. Kelleher, Assistant Attorney General, to Richard P. Haskell, Deputy Director of the Bureau of Corrections, September 25, 1975; advise of John W. Benoit, Deputy Attorney General, to the Honorable John L. Martin, Speaker of the House, dated May 21, 1975; advice of Robert J. Stolt, Assistant Attorney General, to Governor James B. Longley, dated April 29, 1975; advise of Courtland D. Perry, Assistant Attorney General, to Senator Walter Hichens, dated March 19, 1974; advice of Courtland D. Perry, Assistant Attorney General, to Ronald H. Lord, Assistant Finance Officer, Office of Legislative Finance, dated December 11, 1973.

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Bangor Mental Health Institute and thus reduce the capability to receive patients in need of emergency care and treatment.^{2/} Additionally, monies so saved could not be transferred to another use by the Department of Mental Health and Corrections, the condition precedent to any such transfer under 5 M.R.S.A. § 1585 not being present in such instance; i.e., the monies are not required for the purposes named in the appropriation.

We trust this advice will prove helpful to you as you plan the future course of your agency as well as your recommendations to the Legislature.

JOSEPH E. BRENNAN
Attorney General

JEB/ec

^{2/} This does not mean that a patient once admitted to Bangor Mental Health Institute could not be transferred to Augusta Mental Health Institute or another hospital in accordance with 34 M.R.S.A. § 2313 and our advice in that respect.