

MAINE STATE LEGISLATURE

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24 MRSAP 2405-6

STATE OF MAINE

Inter-Departmental Memorandum Date November 10, 1976

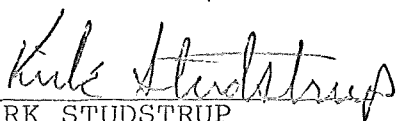
To Frank M. Hogerty, Jr., Superintendent Dept. Bureau of Insurance

From S. Kirk Studstrup, Assistant Dept. Attorney General

Subject Constitutionality of P.L. 1975, c. 442

Your memorandum of October 19, 1976, requested, on behalf of the Board of Directors of the Joint Underwriting Association (JUA), an opinion from this office regarding the constitutionality of the recoupment provision of P.L. 1975, c. 422. The provision in question is set forth in 24 M.R.S.A. § 2405,6, and is part of the statutory plan to provide temporary relief for the problem of hospital and medical malpractice insurance in the State. It is my understanding that although the JUA is operating with regard to hospitals, it has not yet been necessary for any insurer who is a member of the JUA to use the recoupment provision.

It is the stated policy of this office that statutes already enacted into law will be ruled unconstitutional by an opinion of this office only in clear cases such as when the statute in question or an analogous statute has been ruled unconstitutional by the Law Court or an appropriate United States Court. In light of this policy, the presumption of constitutionality which attaches to enacted statutes, and our duty to uphold the statutes, it would be inappropriate for me to render an opinion on the question you have asked. Therefore, I believe we must proceed on the assumption that Chapter 442 is constitutional in its entirety until such time as an appropriate judicial body determines otherwise.


S. KIRK STUDSTRUP
Assistant Attorney General

SKS/ec