

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

April 22, 1977

The Honorable Edward C. Kelleher
House of Representatives
State of Maine
Augusta, Maine 04333

Dear Representative Kelleher:

You have requested this office review the legality of the employment of two persons within the Central Office of the Department of Mental Health and Corrections. While you did not name the individuals, you stated that one person occupies the classified position of Director, Human Development Unit at the Pineland Center but performs no services within that classification and actually works within the Central Office in Augusta "as a coordinator for phasing down the Bangor Mental Health Institute." You stated the second person occupies the classified position of Nurse III at the Augusta Mental Health Institute but performs no services within that classification, instead performing work as a planner within the Central Office in Augusta. As requested, we have conducted an investigation, the results of which, together with our opinions, are set forth below.

Officials of the Department of Mental Health and Corrections, including Commissioner Zitnay, confirmed that a Pineland Center employee in the classification, Director, Human Development Unit has been working in Augusta since late 1976. Frank O'Donnell was assigned to work in Augusta by Commissioner Zitnay to whom Mr. O'Donnell reports. While certain officials confirmed that Mr. O'Donnell did work principally in connection with planning efforts involving both the Augusta and Bangor Mental Health Institutes, others indicated he did substantial work in connection with developing new directions for mental retardation services.

The classified position, Director, Human Development Unit, is a supervisory position within a residential unit for the mentally retarded at Pineland Center. The specifications for this position developed by the Commissioner of Personnel provide, in part, that "(t)he most important aspect of this job is assuring responsibility for training and rehabilitation goals and methods" with the residential unit. It is important to note that Personnel Rule 4.7(a) states that the duty description portion of the class specifications "are descriptive and not restrictive. . . . The use of a particular expression or illustration as to duties shall not be held to exclude others not mentioned that are of similar kind or quality." Here, however, while Mr. O'Donnell performed work for the State, he performed no duties described in the class specifications nor any duties "of a similar kind or quality." We have previously advised under similar facts that this does not comply with Personnel Rule 14.5(a) and the provisions of 5 M.R.S.A. §§ 11 and 741. See, Opinion of Attorney General Brennan, 18 September 1975, addressed to Commissioner John Rosser, Department of Mental Health and Corrections. Commissioner Zitnay advised this office on 11 March 1977 that Mr. O'Donnell, that date, had been returned to appropriate duties at the Pineland Center.

We have been advised by the Personnel Officer of the Department of Mental Health and Corrections that, at the instance of the Director of Mental Health, Dorothy Doyle, a Nurse III at the Augusta Mental Health Institute, was assigned in early 1976 to work in the Central Office on the development of a plan for the provision of mental health services in this State. Following the completion of the plan in the summer of 1976, this employee continued to work exclusively at the Central Office on various planning projects. Prior to the convening of the 108th Legislature, she was designated by the Commissioner to coordinate legislation for the Department. In December, 1976, Ms. Doyle was offered appointment to the classified position, Planning Associate II, which she refused. The Department and the employee negotiated unsuccessfully concerning appointment to a mutually acceptable classification. On March 4, 1977, Associate Commissioner Mullaney directed Ms. Doyle to return to Nurse III duties at the Augusta Mental Health Institute.

The duty description in the class specifications for Nurse III states, in part, that a person in this position supervises "nursing services for the physically or mentally ill in a group of wards and cottages." We believe it important to again acknowledge that the duties listed in the specifications

"are descriptive and not restrictive." Personnel Rule 4.7(a). While no doubt performing significant services for the State, this employee, like Mr. O'Donnell, performed no duties either described in her class specifications or even arguably of similar kind or quality. We see the same problems here as we saw in connection with the employment of Mr. O'Donnell.

The positions recently occupied by Mr. O'Donnell and Ms. Doyle within the Central Office should have been filled in accordance with the Personnel Law and Rules made specifically applicable to the Department of Mental Health and Corrections by 34 M.R.S.A. § 1, which requires the Commissioner, with certain exceptions not pertinent here, to employ all necessary employees in accordance with the Personnel Law.

As you requested, we have considered possible violations of 5 M.R.S.A. § 1585, but find no violation of that statute under these facts. Section 1585 authorizes the transfer of unnecessary appropriations from one agency within a department to the use of another agency within the same department. Such a transfer was not attempted here.

Inasmuch as the individuals under consideration have returned to their respective institutions, we have advised the superintendents that these employees should be assigned duties consistent with their respective classifications. Since all parties acted in good faith and with the best interests of the people of the State in mind, we are of the opinion that such assignments appropriately resolve this matter.

Very truly yours,


JOSEPH E. BRENNAN
Attorney General

JEB/ec

CC George Litway