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52-53
Support Enforcement Mechanism

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February 23, 1978

Gerald E. Talbot
State Representative
Portland District 21-6
State House
Augusta, Maine 04333

Dear Representative Talbot:

In your letter of February 15 you asked about the constitutionality of paragraph 6 in the text of 22 §3792 in Section 1 of L.D. 1966. Having reviewed the paragraph and relevant law, I conclude that the paragraph is constitutionally deficient.

The proposed change in wording (from "county..." to "State") has no bearing on the paragraph's constitutionality and my comments here. The paragraph has been in §3792 for a long time, although to my knowledge it has not been used in years, if at all. The support enforcement mechanism it describes is very similar (with identical language in part) to that in former 19 §722 which was found unconstitutional in Yoder v. Cumberland County, Me., 278 A.2d 379. The mechanism has been nullified by that court decision and by subsequent changes in the statutes (14 §3701) and court rules (Rule 69, M.R.C.P.). Unfortunately, statutory revisions made after and in light of that decision did not reach this paragraph.

I might add that as a practical matter, the court has the authority to enforce a §3792 support order on at least three grounds apart from paragraph 6, so that it seems unnecessary to attempt to modify the paragraph to remedy its deficiencies; deletion would be simplest.

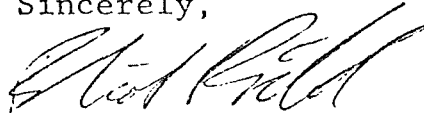
Regarding your request on the need for a fiscal note and appropriation, the Department of Human Services received and has responded to a request from Ronald Lord, of the Legislative Finance Office, for a statement on the fiscal impact of the proposed amendments to L.D. 1966. I am attaching a copy

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of that response for your information.

I hope this meets your needs. If I may be of any further assistance, please contact me.

Sincerely,



Eliot Field
Assistant Attorney General

EF:bjw