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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

April 3, 1978

To: Honorable James B. Longley, Governor of Maine
From: Joseph E. Brennan, Attorney General
Re: Review of the March 15, 1978, Opinion Regarding the
State Board of Education's Authority under 26 M.R.S.A.
Chapter 12, "University of Maine Labor Relations Act."

You requested in your letter of March 16, 1978, that "a thorough review and reconsideration of the brief opinion" issued March 15, 1978, be made.

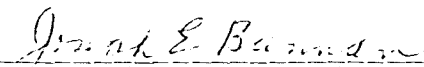
It is my opinion that the March 15, 1978, opinion is a correct legal analysis of 26 M.R.S.A. Chapter 12, "University of Maine Labor Relations Act." The Legislature has identified the State Board of Education, rather than the Governor or his designee, as being the responsible party to negotiate collective bargaining agreements with the vocational technical institutes and the School of Practical Nursing. This legislation is within the Legislature's general constitutional powers and does not encroach upon the Governor's constitutional powers.

The Governor has the responsibility under the "State Employees Labor Relations Act" to negotiate collective bargaining agreements and to administer those agreements. Originally, the vocational technical institutes and the School of Practical Nursing were included within the "State Employees Labor Relations Act." However, a policy decision was made by the Legislature in 1977 to include the vocational technical institutes and the School of Practical Nursing within the "University of Maine Labor Relations Act." P.L. 1977, c. 581. This change directed the State Board of Education to fulfill the negotiating responsibilities which the Governor originally held. It supplied the State Board of Education with the same negotiating authority as the boards of trustees for the University of Maine and the Maine Maritime Academy already had under the "University of Maine Labor Relations Act." 26 M.R.S.A. Chapter 12.

The fact that the State Board of Education shall utilize the Office of State Employee Relations ("OSER") does not undermine the State Board's role in the negotiation process. The 108th Legislature appropriated \$29,000 for the fiscal years 1977-78 and 1978-79 to enable OSER to carry out the purposes of P.L. 1977, c. 581. The purposes of that Act are to place the vocational technical institutes and the School of Practical Nursing within the "University of Maine Labor Relations Act" and to place the employer functions under the Act in the State Board of Education. OSER's role is to supply the State Board with its expertise at the bargaining table. As such, OSER's negotiating authority on behalf of the vocational technical institutes and the School of Practical Nursing emanates from the State Board of Education.

Although it is the State Board of Education which has the responsibility to negotiate a collective bargaining agreement with the vocational technical institutes and the School of Practical Nursing, the amount of the agreement negotiated does not have to be included within the Governor's budget. Although the Governor may exclude the amount contained in the negotiated agreement and insert his recommended level of funding, the negotiated amount should be included as a footnote for the benefit of the Legislature. A complete explanation of what the Governor must include within his budget document is set forth in a February 15, 1977, opinion addressed to Representative Richard J. Carey (copy attached).

I trust the above answers the questions raised in your letter of March 16, 1978.



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Attorney General

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