

# MAINE STATE LEGISLATURE

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bcc: W. Buschmann  
R. Scribner  
B. Schlosser

79-178

RICHARD S. GOHEN  
ATTORNEY GENERAL



STEPHEN L. DIAMOND  
JOHN S. GLEASON  
JOHN M. R. PATERSON  
ROBERT J. STOLT  
DEPUTY ATTORNEYS GENERAL

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

October 5, 1979

The Honorable Louis Jalbert  
Chairman  
Subcommittee to Study Vocational  
Technical Institutes  
c/o Legislative Finance Office  
State House  
Augusta, Maine 04333

Dear Representative Jalbert:

You have asked us to determine whether it is a violation of 5 M.R.S.A. §8-B for the Director of the Central Maine Vocational Technical Institute to occupy a housing facility located at the Institute. Having given the matter considerable thought, it is our view that the issue is not really susceptible of a "legal" determination, but rather should be reviewed by the Legislature to ascertain whether there has been compliance with the legislatively mandated policy.

The first two sentences of 5 M.R.S.A. §8-B provide as follows:

"It is the intent of the Legislature to discourage the construction, reconstruction and equipping of new housing facilities for state employees at state institutions and all other areas of State Government and to cause the termination of existing provision of housing facilities to state employees whenever other housing facilities are reasonably available to such employees and their residence elsewhere will not substantially impair the effective management and operation of the state department or institution by which such persons' are employed. The housing facilities of each state department shall be reviewed periodically by the state department involved, and the provision of any such housing facilities shall be terminated whenever the above

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stated criteria are met. . . ."

As you will note, the language quoted above does not establish either a total or qualified prohibition against the construction, reconstruction or equipping of new housing facilities. Rather, it states a strong legislative policy to be followed by the heads of executive departments in discharging their duties. For that reason, it is impossible to analyze a particular case in the context of whether there has been a "violation of law" as that term is customarily used.

To state that the matter is not strictly a legal one is not to suggest that it is unimportant. To the contrary, §8-B sets out a clear directive to department heads which the Legislature has every reason to expect will be followed. Since that directive is more in the nature of a policy rather than a prohibition, it is our view that compliance or noncompliance should be determined by the Legislature and not by the Department of the Attorney General.

In the context of the particular matter which you brought to our attention, we would note that we have found nothing in writing which offers the justification required for employee housing. Furthermore, we know of no attempt by the department to explain to the Legislature the decision which was made in this particular instance. Thus, the Appropriations Committee may wish to investigate, through one of its subcommittees, the propriety of that decision. Since §8-B requires periodic review of all employee housing at state institutions, the legislative inquiry might focus on the need to continue to provide housing at the institute, as well as the propriety of the initial decision. Needless to say, the appropriate course of action is ultimately for legislative determination alone.

In closing, I would note that since state departments rely on appropriations to carry out their actions, the Legislature does not lack the power to impose sanctions when it finds that its policies have been violated. In fact, in many cases, the sanctions available to the Legislature may be greater than those available to the Attorney General.

I hope this information is helpful. Please feel free to contact me if I can be of any further service.

Sincerely,

RICHARD S. COHEN  
Attorney General

RSC:ks