

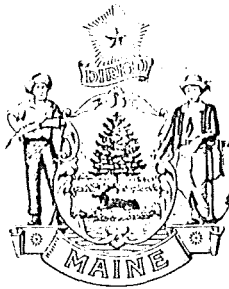
# MAINE STATE LEGISLATURE

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80-15

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AUGUSTA, MAINE 04333

January 25, 1980

To: Fred A. Douglas, Director  
Division of Higher Education Services

From: Waldemar G. Buschmann  
Assistant Attorney General

Re: Control of Educational Programs Offered in Maine by Non-Maine Institutions.

This opinion is in response to your memo of January 7, 1980, regarding the applicability of 20 M.R.S.A. §§2202 et. seq. to programs being offered in Maine by two out-of-state institutions, namely New Hampshire College of Manchester, New Hampshire and Suffolk University of Boston, Massachusetts. This opinion is limited to the facts surrounding the programs offered by New Hampshire College. The questions dealing with Suffolk University will be the subject matter of a second opinion.

Facts Regarding New Hampshire College:

New Hampshire College, located in Manchester, New Hampshire has for several years offered courses at the Brunswick Naval Air Station and the Winter Harbor Naval Station with such courses leading to the obtaining of a Masters Degree in Business Administration (MBA) from the College. This was organized as part of the Armed Forces Education Program and the courses were designed for active duty military personnel on the base.

Although no apparent advertising was done, the school recently began to allow non-base local area residents to enroll in the courses which comprise the MBA program. This action was considered to be in violation of 20 M.R.S.A., Chapter 301, §2202 as New Hampshire College had never received approval under this statute.

As of October 17, 1979 officials of New Hampshire College were notified by the Department of Educational & Cultural Services that enrollees in their MBA program at the Brunswick Naval Base and Winter Harbor Naval Base were to be limited to two categories as follows:

1. Active duty military personnel and their dependents.
2. Retired military personnel who hold appropriate I.D. cards as identified in military regulations and their dependents.

Officials of New Hampshire College have submitted a proposal in cooperation with officials of Nason College located in Springvale, Maine to operate a coordinated arrangement which resulted from the reference in the last paragraph of 20 M.R.S.A., Chapter 301, §2202. Action on this proposal is pending.

Officials of New Hampshire College wish to expand their enrollments at Brunswick, and perhaps Winter Harbor, and allow any individual who can meet admission requirements to enroll in their course offerings at the two locations.

Questions Regarding New Hampshire College:

1. Is it necessary for New Hampshire College to obtain statutory authority under procedures identified in 20 M.R.S.A., Chapter 301, §2202 in order to offer post-secondary education courses to active duty base personnel and/or retired military personnel at either the Brunswick or Winter Harbor Naval Stations?

2. Is it necessary for New Hampshire College to obtain statutory authority under procedures identified in 20 M.R.S.A., Chapter 301, §2202 in order to offer post-secondary education courses to any and all individuals who can meet admission requirements and who have no military status but wish to enroll at either the Brunswick or Winter Harbor Naval Stations?

Answer:

It is not necessary for New Hampshire College to obtain statutory authority under procedures identified in 20 M.R.S.A. §2202 in order to offer post-secondary education courses to active duty base personnel, retired military personnel, or any other individuals at either the Winter Harbor or Brunswick Naval Stations.

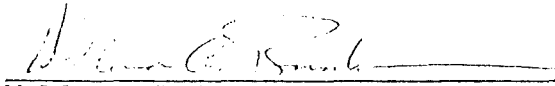
Reasons:

Both the Winter Harbor Naval Station ("WHNS") and the Brunswick Naval Air Station ("BNAS") are Federal enclaves. The Federal Government has exclusive jurisdiction over all of the land which comprises WHNS and over approximately half of the land which comprises BNAS. The Winter Harbor Naval Station was ceded by the State to the Federal Government on or about February 9, 1929, in accordance with the revised statutes of 1916, Chapter 2, §12, which granted exclusive jurisdiction over all territory ceded to the United States Government, except for "the service upon such sites of all civil and criminal process of the courts of this State." Also, the Federal Government took possession of 1,400 plus acres of the Brunswick Naval Air Station on or about May 15, 1943, and assumed exclusive jurisdiction over the BNAS in accordance with the revised statutes of 1930, Chapter 2, §§10, 11, and 12 as amended by Public Law 1939, Chapter 248. Significantly, prior to 1940 the Federal Government automatically acquired exclusive jurisdiction over the property which it took possession of, but after 1940 it was required to accept exclusive jurisdiction over the property before it would acquire such exclusive jurisdiction. 40 U.S.C.A. §255.

Although the Federal Government has exclusive jurisdiction over WHNS and over the 1,400 plus acres acquired to form BNAS on or about May 15, 1943, the Federal Government never accepted exclusive jurisdiction to the property which it

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acquired at various times between 1943 and 1958 and added to BNAS. Accordingly, it appears the Federal Government only has proprietary jurisdiction over this 1,593 plus acres and over the McKean Housing Complex, consisting of 70.4 acres, and other property held in Topsham consisting of 125.04 acres which are controlled by BNAS. If New Hampshire College is offering its courses on the parcel that was acquired in May of 1943, then the State has no jurisdiction to require that New Hampshire College be licensed under 20 M.R.S.A. §2202 before it may offer those courses. However, if the courses are being offered on other parts of BNAS, which were acquired after 1943 and which the Federal Government has not accepted exclusive jurisdiction over, the State does have jurisdiction to require that New Hampshire College adhere to the requirements of 20 M.R.S.A. §2202. You should take steps to ascertain whether the programs are being offered on the first parcel or if they are being offered on other parcels under the control of the Brunswick Naval Air Station personnel but which the State still has jurisdiction over.

  
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Waldemar G. Buschmann  
Assistant Attorney General