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29 January 1980

The Honorable G. William Diamond
State of Maine
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Diamond:

Pursuant to 5 M.R.S.A. §195, we are pleased to respond to your January 22, 1980, request for a legal opinion from the Attorney General. In your letter you state that we need not answer your second question if we answer the first one in the negative. We interpret your initial inquiry to be whether the State or any of its political subdivisions is obligated, apart from any statutes that it may have enacted, to train correctional officers.

As more fully explained hereinafter, apart from existing statutes which the Legislature has adopted, neither the State nor any of its political subdivisions is under an independent legal obligation to train correctional officers. However, a failure to provide training may increase the likelihood that such officers would violate the civil rights of prisoners, which violations may give rise to substantial civil liability. Insufficient training may also jeopardize federal funds that Maine has received under the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. §§3701 et seq. and may render the State ineligible for future federal funding for the training of correctional officers under the Justice System Improvement Act of 1979, Pub. L. No. 96-157 (Dec. 27, 1979). Since apart from these considerations the State is under no obligation to provide training, we have not addressed the second question.

In general, a state through the exercise of its police powers may enact any and all legislation it chooses, except to the extent that such legislation violates the State or Federal Constitution. U.S. Const. amend. X, Calder v. Bull, 3 U.S. 386 (1798); United States v. Robinson, 106 F.Supp. 212 (D. N.D. 1952); Rohrer v.

Milk Control Board, 322 Pa. 257, 186 A. 336 (1936); M. Forkosch, Constitutional Law §288 at 266 (1963). Although a state could legally require a correctional officer to undergo training as a condition of employment, see Dent v. West Virginia, 129 U.S. 114 (1889) (medicine), there is no State or Federal Constitutional provision which obligates a state or any of its political subdivisions to provide such education.

In its wisdom our Legislature enacted legislation requiring full-time correctional officers to complete a basic training course of not less than eighty hours within the first twelve months of employment, 25 M.R.S.A. §2805(1). It also required in-service training of not less than twenty hours per year as a condition of continued employment, 25 M.R.S.A. §2805(3). As explained above, this legislation is entirely permissible, although not required by any constitutional provision.

The legislative history behind this bill, P.L. 1978, c. 701, indicates that the Legislature established training requirements for correctional officers for three reasons. First, the Legislature felt that inadequate training posed a physical threat to both correctional officers and inmates. Second, without proper training correctional officers were more likely to violate the civil rights of prisoners, which violations could expose them to civil liability. Finally, the Legislature was concerned that inadequate training could lead to the loss of federal funds. Report of the State Government Committee on the Training of Corrections Officers (pursuant to H.P. 1592) 4 (1978). The first reason is self-evident; the latter two deserve some comment.

It has been said that a prisoner retains all the rights of an ordinary citizen except those rights which are expressly or by necessary implication taken from him by law. See Wolff v. McDonnell, 418 U.S. 539 (1974). If a correctional officer deprives an inmate of a fundamental right secured by the Federal Constitution, the officer is subject to suit and liability for either money damages or injunctive relief under 42 U.S.C. §1983. Thus a correctional officer may be liable to a prisoner if the officer physically abused the prisoner, Davidson v. Dixon, 386 F.Supp. 482 (D. Del. 1974), aff'd., 529 F.2d 511 (3rd Cir. 1975), were deliberately indifferent to the inmate's serious medical needs, Estelle v. Gamble, 429 U.S. 97 (1976), interfered with his right of access to the courts, Procunier v. Martinez, 416 U.S. 396 (1974), deprived a prisoner of the free exercise of his religion, Cruz v. Beto, 405 U.S. 319 (1972), and in numerous other ways as well. A qualified immunity for the corrections officer exists; viz., he will not be liable for monetary damages if he acts in good faith and with probable cause. This defense is

unavailing if he either knew or should have known that his conduct would violate an established constitutional right of the prisoner. Procunier v. Navarette, 434 U.S. 555 (1978). Mere subjective good faith is insufficient if the officer should have known that the conduct he was engaged in violated constitutional guarantees. "This, in essence, requires an official to be aware of the constitutionality of the policy he is acting under." M. Weisz, Defenses to Civil Rights Actions Against Correctional Employees, American Correctional Association 19 (1977). Constitutional rights of inmates are continuously evolving. See Procunier v. Navarette, supra at 562-63. Without training and education, a correctional officer may not know what rights an inmate has and he may therefore unintentionally subject himself to liability under 42 U.S.C. §1983. Providing adequate training is an obvious method of avoiding this problem.

There is an additional reason for training correctional officers. Maine has received "Part E Funds" under the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. §§3701 et seq. One of the conditions for receiving these funds is that the State provide training to correctional officers. More specifically, the State is obligated to provide:

> A. At least 80 hours recruit training, at entry into duty or during the first year of tenure for both guards and correctional officers on the one hand and probation officers and parole officers on the other, and
>
> B. At least 20 hours of in-service or refresher training per year for all such correctional personnel with more than one year of tenure.

Guideline Manual, State Planning Agency Grants, M 4100.1E 134 (1976).

If the State does not provide this training its Part E Funds could be revoked. In future years grants from the Law Enforcement Assistance Administration will be controlled by the Justice System Improvement Act of 1979, Pub. L. No. 96-157 (Dec. 27, 1979), amending 42 U.S.C. §§3701 et seq. Under the new Act, Formula Grants may be given to States to "[train] criminal justice personnel in programs meeting standards revised by the Administrator . . ."

Pub. L. No. 96-157, §401(18) (Dec. 27, 1979). Although these standards have not yet been issued, it may well be that if the State desires federal funding to train correctional officers it will have to meet standards similar to those that currently exist.

In conclusion, there is no absolute legal requirement that a state provide training to correctional officers. As explained in this letter, however, certain adverse consequences may flow from the failure to provide such training or from the provision of inadequate training.

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

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