

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

April 27, 1989

Representative Donald V. Carter
Maine House of Representatives
State House Station #2
Augusta, Maine 04333

Dear Representative Carter:

This is in response to your recent inquiry whether there is any constitutional impediment to the imposition by the Department of Educational and Cultural Services ("DECS") of new education requirements on local school districts in the absence of appropriations to pay for such requirements. Your inquiry raises two questions: first, whether the state government as a whole may impose such requirements, and, second, whether the Legislature may delegate the power to do so to DECS. For the reasons which follow, it is the opinion of this Department that the Legislature may enact new educational requirements whether or not it specifically funds them, and that the Legislature may delegate this authority to DECS by means of an appropriate grant of rulemaking authority.

I. Legislative power to impose new educational requirements.

Article IV, Part Third, section 1 of the Maine Constitution provides that the Legislature

shall have full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this State, not repugnant to this Constitution, nor to that of the United States.

Education is unquestionably one area where this legislative power prevails. Opinion of the Justices, 68 Me. 582 (1876). This Department is unaware of any constitutional requirement that legislation within this broad scope of authority be accompanied by any appropriation. Indeed, in the case of education, the Constitution strongly suggests that this is not so:

"A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people; to promote this important object, the Legislators are authorized, and it shall be their duty to require, the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools. . . ." Me. Const., Art. VIII, Pt. 1, sec. 1 (emphasis added).

Thus, in the field of education, if not generally, there is no constitutional impediment to the imposition of new duties on the municipalities of the state by the Legislature, even if those duties require the expenditure of funds not provided to the municipalities by the Legislature.^{1/}

II. Delegation of power to impose new educational requirements to DECS.

With respect to the impositions of new educational requirements by DECS, the pertinent questions are whether any legislation authorizes DECS to take such action, and, if so,

^{1/}As you may know, last year the Legislature amended the education statutes of the state to include a requirement of full state funding of new educational programs until June 30, 1992. P.L. 1987, c. 821, enacting 20-A M.R.S.A. § 2(3). The effectiveness of this provision is open to serious question, however, because of the well-established constitutional principles that one Legislature cannot prevent a future Legislature from amending or repealing any law which it passes, Jones v. Maine State Highway Commission, 238 A.2d 226, 230 (Me. 1968); Baxter v. Waterville Sewerage District, 146 Me. 211, 215 (1954), nor require a subsequent Legislature to make future appropriations, Maine State Housing Authority v. Depositors Trust Co., 278 A.2d 699, 707-08 (Me. 1971); Opinion of the Justices, 146 Me. 183 (1951). There is no reason, of course, why the Legislature cannot continue this statutory policy if it so chooses; the significance of the principles just set forth is only that it may change the policy as well.

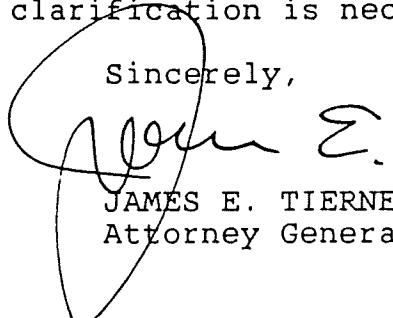
whether such legislation constitutes a valid delegation of legislative power to the agency. Me.Const. Art. III, section 2 prohibits an administrative agency from usurping the function of the Legislature by creating law. Moreover, the Due Process Clause of Art. I, section 6-A requires that any delegation of legislative authority be accompanied by adequate standards and safeguards to assure that the delegation is not abused. Superintending School Committee v. Bangor Educational Association, 433 A.2d 383, 386-87, n. 4 (Me. 1981).

Adequate standards exist where "the legislation clearly reveals the purpose to be served by the regulations, explicitly defines what can be regulated for that purpose, and suggests the appropriate degree of regulation." Lewis v. State Department of Human Services, 433 A.2d 743, 748 (Me. 1981). Or as expressed in Maine School Administrative District No. 15 v. Reynolds, 413 A.2d 523, 529 (Me. 1980), a delegation must contain "sufficient standards - specific or generalized, explicit or implicit to guide the agency in the exercise of its authority . . . so that (1) regulation can proceed in accordance with basic policy determinations made by those who represent the electorate and (2) some safeguard is provided to assist in preventing arbitrariness in the exercise of power." See also Secure Environments v. Norridgewock, 544 A.2d 319 (Me. 1988); Northeast Occupational Exchange v. State, 540 A.2d 1115 (Me. 1988).

Whether or not any educational requirement prescribed by DECS meets these criteria will depend on the adequacy of the legislative mandate and how faithfully DECS adhered to it. This latter inquiry also includes compliance with the rulemaking provisions of the Maine Administrative Procedure Act, 5 M.R.S.A. § 8051, et seq. Northeast Occupational Exchange v. State, supra, 540 A.2d at 1117; Lewis, supra, 433 A.2d at 749. If there is any specific educational requirement imposed by DECS to which you would like to have examined for compliance with the rules outlined above, this Department would be happy to do so.

I hope the foregoing is of assistance to you. Please feel free to require if further clarification is necessary.

Sincerely,


JAMES E. TIERNEY
Attorney General

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