

MAINE STATE LEGISLATURE

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

May 8, 1989

Honorable John R. McKernan, Jr.
Governor, State of Maine
State House Station #1
Augusta, Maine 04333

Dear Governor McKernan:

I am writing in response to your request for advice from this Department whether, under the current state of the law, a corporation may be appointed Superintendent of the Augusta Mental Health Institute. For the reasons which follow, it is the Opinion of this Department that, absent legislative action, the Superintendent of the Institute must be a natural person, and therefore a corporation may not be appointed to that position.

The qualifications for appointment of Superintendent of AMHI are set forth at 5 M.R.S.A. § 3202:

1. Chief administrative officer. The chief administrative officer of each state mental health institute is called the superintendent.
2. Qualifications. To be eligible to be appointed superintendent, a person shall be a qualified psychiatrist, qualified hospital administrator, qualified psychologist or a person with a master's degree in social work, public administration or public health.

In addition, 5 M.R.S.A. § 1401(1), which governs appointments to various senior administrative positions in the mental institutions of the State, provides:

1. Appointment. The commissioner may appoint chief administrative officers of state institutions as necessary for the proper performance of the functions of the department.

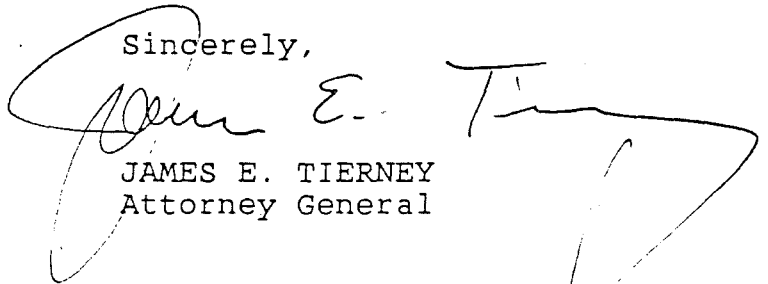
A. To be eligible for appointment as a chief officer of a state institution, a person shall be experienced in the management of a particular type of institution to which he is to be assigned.

* * *

It is plain from the wording of these two provisions that the Legislature contemplated that a natural person would occupy the position of Superintendent of AMHI. Section 3202(2) provides that the Superintendent possess one of four possible qualifications, three of which involve the possession of educational degrees or occupational licenses, which it is impossible for a corporation to have. The fourth, that of "qualified hospital administrator," could conceivably be read to include a corporation, but since it is included as one item in a series the other members of which must necessarily be natural persons, it would strain the language of the provision excessively to find that the Legislature intended that the "hospital administrator" be anything other than a natural person. This conclusion is buttressed by section 1401, which, as quoted above, speaks of a chief administrative officer as being a "person . . . experienced in the management of a particular type of institution to which he is to be assigned." (emphasis added). The use of a personal pronoun in this sentence also suggests that the Legislature did not intend that a corporation serve as a chief administrator officer in the Department of Mental Health and Mental Retardation. Consequently, this Department concludes that in order for a corporation to be appointed as Superintendent of AMHI, new legislation would have to be enacted expressly authorizing such action.

I hope the foregoing answers your question. Please feel free to reinquire if further clarification is necessary.

Sincerely,



JAMES E. TIERNEY
Attorney General

JET/ec

cc: Hon. Charles P. Pray
Hon. John L. Martin