

MAINE STATE LEGISLATURE

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November 21, 1991

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Senator Joseph C. Brannigan, Senate Chair
Representative Lorraine Chonko, House Chair
Joint Standing Committee on Appropriations
& Financial Affairs

State House
Room 228
Augusta, Maine 04333

Dear Senator Brannigan and Representative Chonko:

This is in response to your letter of November 16, 1991 asking for legal guidance from this Department regarding the privatization of services currently provided by State employees.


Before I respond to your general question about the flexibility departments have in privatizing their services, I would like to comment on the specific advice that was given to Corrections Commissioner Donald Allen by Assistant Attorney General Diane Sleek. Assistant Attorney General Sleek's advice to Commissioner Allen, as set out in her memorandum of October 10, 1991, did not address the question whether the Department of Corrections could privatize services. Rather, it addressed the legal requirements governing the transfer of funds from one account to another by way of a financial order. Some weeks after that memo was written, Assistant Attorney General Sleek was asked, as a separate matter, to advise informally Commissioner Allen as to whether privatizing the Maine Youth Center in its entirety required legislative approval. Assistant Attorney General Sleek advised Commissioner Allen that legislative approval was required. This advice prompted the Corrections Department to propose Part W, Sec. 2 of the Governor's proposed Supplemental Appropriations Bill.

Senator Joseph C. Brannigan
Representative Lorraine Chonko
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In regard to the extent of flexibility that the Executive Branch has in privatizing departmental services, it is the opinion of this Department that the answer to that question depends on the agency involved and the services proposed to be privatized. This is because the Legislature has delegated direct statutory authority to some agencies to disburse funds for the support of various services. In the case of medical services to be provided to prisoners at the Maine Correctional Center, the Legislature has given the Commissioner the statutory authority to contract out those services to a public or private community agency under Title 34-A M.R.S.A. § 1206 if funds are available for this purpose. Each discrete service proposed for privatization must be reviewed in the overall statutory context impacting this agency and services to be provided except, of course, if the Legislature specifically authorizes the privatization of the services.

I trust that this response addresses your concerns. Should you require any further assistance, please feel free to contact me.

Sincerely,


MICHAEL E. CARPENTER
Attorney General

MEC/dab

cc: Governor John R. McKernan, Jr.
Senator Charles P. Pray
Representative John L. Martin
Commissioner Donald L. Allen