

VOLUME 32

Opinion No. 13

STATE HOSPITAL; Power to provide education for inmates—
Section 80-2401, R.C.M. 1947.

HELD: That the State Hospital at Warm Springs has the authority to provide an educational program for inmates.

March 4, 1968

Dr. Stanley Rogers, Superintendent
Warm Springs State Hospital
Warm Springs, Montana

Dear Mr. Rogers:

You have requested my opinion with regard to the following question:

Does the State Hospital at Warm Springs have a direct responsibility for providing free public education to inmates capable of receiving it?

I have been informed that at the present time a full time special education teacher has been added to the hospital staff and that the hospital is in the process of developing an educational program for its patients.

The State Hospital at Warm Springs was created pursuant to Article X, Section 1 of the Montana Constitution, which provides:

Educational, reformatory and penal institutions, and, those for the benefit of the insane, blind, deaf and mute, soldiers' home, and such other institutions as the public good may require, shall be established and supported by the state in such a manner as may be prescribed by law.

The function of the State Hospital has been defined by the legislature in section 80-2401, R.C.M. 1947. This section states:

The institution located in Warm Springs is the "State Hospital". The only function of the State Hospital is the care and treatment of mentally ill persons and alcoholics. The State Hospital is in the division of mental hygiene of the department of institutions.

This section contains the only grant of authority to the State Hospital.

In granting the hospital authority in such broad terms the legislature obviously felt that this was an area in which a great deal of flexibility was necessary. Such broad grants of power are by no means uncommon, as is pointed out in 7 C.J.S. "Asylums" §8, page 149:

The usual, and, indeed, practically universal practice is for the legislature to confide the management of state asylums to designated boards or officials. Where that is done, such boards or officials have a complete and unlimited discretion with respect to the management and control of such institutions, subject only to whatever express directions may be given them by statute and to the requirement that any rules made by them shall be reasonable.

The Montana Supreme Court has upheld the legislative practice of charging a state agency with the responsibility of accomplishing

a certain function and allowing it to choose the means whereby such function is accomplished. In the case of *Guillot v. State Highway Commission, et al.*, 102 Mont. 149, 56 P. 2d 1072 the Court stated:

* * Where the legislature sees fit to confer upon a board or commission such broad general power, the repository of the power is vested with discretion in choosing the means and methods of accomplishing the result expected, and, in the absence of fraud or manifest abuse of that discretion, its determination is conclusive. (*State ex rel. Pew v. Porter*, 57 Mont. 535, 189 Pac. 618; *State ex rel. Pigott v. Porter*, 57 Mont. 539, 189 Pac. 619.)

In addition to this, it has long been the rule in Montana that a state agency has, besides the power expressly granted to it, such other implied powers as are necessary to fully effectuate the power expressly granted. In *re Farrell*, 36 Mont. 254, 92 Pac. 785; *State ex rel. Dragstedt v. State Board of Education*, 103 Mont. 336, 62 P. 2d 330; *Guillot v. State Highway Commission et al.*, *supra*. The Montana Supreme Court in the *Guillot* case noted:

* * But the powers which an officer, commission or department may exercise are not confined to those expressly granted by the Constitution or statutes of the state. "In addition to powers expressly conferred upon him by law, an officer has by implication such powers as are necessary for the due and efficient exercise of those expressly granted or such as may be fairly implied therefrom. * * * (46 C.J. 1032)."

If the State Hospital determines that an educational program would assist it in fulfilling its express function of caring for and treating mentally ill persons, then it is my opinion that they have the necessary authority to provide such a program for those inmates capable of participating in the same.

Very truly yours,

FORREST H. ANDERSON
Attorney General

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