

# MAINE STATE LEGISLATURE

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## **THE PROFESSIONAL PRACTICES ACT FOR TEACHERS**

A Proposal to Regulate Employment Practices  
in Public Education

A Report Prepared for the 105th Maine Legislature

December 1, 1970

by the

**MAINE EDUCATION COUNCIL**

Printed under Appropriation 1680.1





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MAINE EDUCATION COUNCIL

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Superintendent of Schools  
Westbrook School Department  
Westbrook, Maine 04092

Dr. Lincoln T. Fish, Chairman  
University of Maine at Portland-Gorham  
Gorham, Maine 04038

December 1, 1970

Honorable Members of the 105th Maine Legislature:

The Maine Education Council is pleased to submit this report as its response to Order S.P. 544 of the 104th Legislature directing the Council to conduct a comprehensive study of the Bill, "An Act Creating the Professional Practices Act for Teachers," H.P. 222, L.D. 272, introduced at the regular session of the 104th Legislature.

The Council is indebted to three of its members who planned and produced the report: Dr. Carroll R. McGary, Professor Paul V. Hazelton, and Mr. Dale D. Higgins.

In the opinion of the Council this report is a thoroughly researched and scholarly document. It deserves the careful consideration of all who wish to further the efforts of the teaching profession to police itself.

For the Maine Education Council,

Lincoln T. Fish, Chairman





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September 1, 1970

Dr. Lincoln T. Fish, Chairman  
Maine Education Council  
University of Maine at Portland-Gorham  
Gorham, Maine 04038

Dear Dr. Fish:

I am pleased to submit herewith the report of the subcommittee on a Professional Practices Act. We believe this proposal represents sound legislation and is acceptable to a majority of the interests concerned. We further believe it meets the requirements of the legislature contained in S. P. 454, the study order, and recommend its adoption.

Respectfully submitted,

Professional Practices Act  
Subcommittee of the Maine Education Council

Carroll R. McGary, Chairman  
Paul Hazelton  
Dale Higgins



## INTRODUCTION

The legislature authorized and directed the Maine Education Council to "conduct a comprehensive study of the bill, An Act Creating the Professional Practices Act for Teachers, House Paper 222, L.D. 272, as introduced at the regular session of the 104th Legislature, and further ordered that the Maine Education Council submit a written report of their findings, together with any necessary recommendations in implementing legislation to the next regular or special session of the legislature." (See Appendix A, Exhibit I.)

This report presents some of the background leading to the proposed Professional Practices Act, the positions of several major groups interested in this act and a series of recommendations. Appendix A, Exhibit II contains a copy of L.D. 272 and of the amendments which were proposed by the Education Committee for L.D. 272. You will note that neither the original act nor the amended act was entirely acceptable to the various organizations and the legislature, and thus the bill failed to pass.

This report contains the wording for a Professional Practices act designed to carry out the recommendations of the Council.

## BACKGROUND

For some years there has been mounting concern regarding certification and employment practices for teachers including dismissal and nonrenewal of contract. Much of the concern originated within the teaching profession itself, especially in relation to the protection of teacher rights under dismissal proceedings. The profession has also recognized the need for enforcement of a code of ethical conduct in relation to teacher contracts. Their concern has been shared by groups such as the Maine State School Board Association. As a result, the Maine Teachers Association, in cooperation with the State School Board Association and the Maine School Superintendents Association, undertook to develop a professional practices act.

Under the terms of this act, certain procedures would have been required in hiring, dismissing and not renewing the contract of a teacher. At the same time an attempt was made to protect school committees and the public from the unethical practices of teachers and from incompetency in the profession. The principle of the act is well established in other fields and can be seen in such licensing arrangements as the boards of registration of medicine, dentistry, barbers, hairdressers, attorneys and the like.

There are many arguments advanced for a professional practices act, but chiefly they are as follows:

1. A teacher should have some protection against arbitrary or unfair dismissal or contract procedures.
2. The public should be protected against incompetent or unethical teachers.

3. Under the present statutes, both of the above areas are vaguely defined, difficult of enforcement and subject to misinterpretation.

While recognizing that it is the right of the public, through the legislature and the State Board of Education, to determine policy regarding teacher certification, contracts, dismissals, etc., it is felt that the profession itself should be the judge of whether these conditions of policy are being met. The public is protected through final review by the State Board of Education and the ever-present power of the legislature to amend the law or revise it if the profession does not live up to its responsibilities. There is a great deal of precedent for this point of view in the boards mentioned previously which register or license and discipline other occupations; for example, medicine, dentistry, the bar, barbers, hairdressers, plumbers and electricians. This type of law, it can be seen, runs the gamut from the highly specialized professions to the skilled labor area. The argument therefore goes that teachers should be included if they are to be recognized as professionals. Teachers are interested in weeding out the incompetents in their midst, but also in protecting their membership from unjust practices. From our investigations there seems to be little argument with the principle of a professional practices act. There is much difference of opinion, however, concerning the details, as you will note.

## POSITIONS

Our investigation revealed the following major points which were raised by the four groups mainly concerned with this law, namely, the Maine School Superintendents' Association, the Maine Teachers' Association, the Maine State School Board Association and the State Board of Education.

### The Maine School Superintendents' Association

The Maine School Superintendents' Association accepts in principle the idea of a professional practices act. Their major concerns relate to the inclusion of probationary teachers under L.D. 272. Presumably, the amendments answer many of their objections. However, there is still a variety of opinion concerning the act with many school administrators still reluctant to accept the changing role of the teacher.

### The Maine State School Board Association

The position of the State School Board Association is similar to that of the Superintendents' Association. How representative their published opinion is of school committees in general is uncertain, but L.D. 272 was discussed by their executive board which took the following action. They adopted in principle the provisions of the Professional Practices Act with the following reservations:

1. That any references to probationary teachers other than what exists in the present law be eliminated.
2. That a dedicated tax, such as teachers' certification fees, be eliminated.

3. That the State Board of Education should not be curtailed in its judgement in the selection of a commission for reviewing superintendents' recommendations.

#### The Maine Teachers' Association

The Maine Teachers' Association's position on L.D. 272 is strongly supportive, indeed, the original draft as proposed by them provided even stronger safeguards for teachers' rights. They did, however, modify their position considerably and have indicated a willingness to modify it even further. All of the amendments, for example, as contained in the proposed Committee amendment A, are acceptable to them. The major point on which they believe there can be no compromise is the right of the public to determine policy, but the right of the profession to determine competence. In light of the fact that policy can always influence the way competence is judged, we see their position as no great hindrance to the enactment of a law.

#### The State Board of Education

The State Board of Education considered L.D. 272 at its regular meeting on November 15, 1968. While no formal action was taken several objections were raised. These concerned the method of appointment of the members of the Commission, the use of certification machinery for disciplinary ends, and the charging of a fee for teaching certificates. It was agreed informally that Mr. Hazelton would represent the Board at the public hearing in support of L.D. 272, provided the objections of the Board were met.

## PROCEDURES

It is our belief that the Professional Practices Act is sound in principle and that L.D. 272 as amended represented a reasonable approach to the problem. L.D. 272, with the attached amendments, was therefore the starting point of the Maine Education Council's deliberations and copies of the amended act were printed and sent to various interested organizations for their reactions (see Appendix A, Exhibit III). The chairman of the Maine Education Council appointed a subcommittee consisting of Professor Paul Hazelton of Bowdoin, Superintendent Dale Higgins of Waldoboro and Superintendent Carroll McGary of Westbrook, Chairman, to continue deliberations on the Act, and prepare a final draft for consideration by the full Council.

Feedback from the mailings was very limited, being from three sources only. All the statements, however, tended to corroborate the problems listed by the various organizations above. Basically, the areas of disagreement were as follows:

1. The rights of probationary teachers.
2. The method of selecting members of the Professional Practices Commission.
3. The method of financially supporting the Professional Practices Commission.

In addition, the subcommittee felt the following matters needed attention:

4. Confusion about the terms, "dismissal," "non-renewal of contract," "non-extension of contract."

5. The procedure to be followed by the superintendent in notifying the teacher and the committee.

6. The length of the probationary period for (a) continuing contract teachers moving to another system, (b) continuing contract teachers moving to a different position in the same or a different system.

7. Suspension with or without pay.

8. The challenge procedure.

9. The use of certification machinery to punish unethical behavior.

And finally, a number of minor suggestions were made as to wording, format, etc., all of which were considered by the subcommittee.

RECOMMENDATIONS

1. The rights of probationary teachers.

Probationary teachers should be given specific reasons in writing when their contract is not to be renewed and allowed a hearing before the school committee, whose decision shall be final.

While recognizing that the probationary period is exactly that, a time for finding out whether a teacher is competent and suitable for a school system, it still seems to us that a probationary teacher has the right to know why his services are unsatisfactory so that he may attempt to improve. Further, administrators who might be encouraged to act arbitrarily or capriciously in employing and releasing teachers will be required to substantiate their recommendations and be accountable to the school committee for their actions which is as it should be. You will note that this recommendation does not allow an appeal beyond the school committee contrary to the right accorded a continuing contract teacher, but does recognize a basic human and constitutional right, i.e. to hear the charges against you and to face your accuser.

Interestingly enough, since the development of this position by the Maine Education Council, a Maine Court has ruled that probationary teachers do have the right of reasons and a hearing.<sup>1</sup>

2. Method of selecting members of the Professional Practices Commission.

The appointment of the Commission should be solely the

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<sup>1</sup>Superior Court, Civil Action, Docket No. 70-470, May 15, 1970 (see Appendix C for full text of ruling by Justice Pomeroy).

responsibility of the State Board of Education, which should seek the advice of various professional organizations. We believe the Commission should be mostly professionals, but should have a small minority representing the public.

Because teaching is a profession which not only deals with the public but one which requires the public to use its services, the argument for a review board entirely of professionals loses some validity. We recognize that the public's interest is essentially protected by the appointing agency, i.e., the State Board of Education, nevertheless we believe that there should be some public representation on the Professional Practices Commission. This position results from a long standing belief that in American education, the schools, in the final analysis, belong to the people and can only be as good as they want them to be.

3. Financial support of the Commission.

The support of the Commission should come from the general fund. If a fee is to be charged for certificates, the revenue thus derived should not be "dedicated."

Dedicated funds in general restrict the legislature in dealing with current problems which may require greater flexibility in allocation of resources than the dedicated revenue would allow. While we do not necessarily object to a fee being charged for the certificate, which is a common practice in many professions, we do believe support for the Commission should come from the general fund.

4. Confusion of terms.

The sections dealing with dismissal should be separated from those dealing with renewal and extension of contract.

- a. dismissal refers to termination of a valid contract, either probationary or continuing, prior to its expiration date.
- b. non-renewal refers to failure to offer a probationary teacher a contract for the next year.
- c. non-extension refers to failure to offer a continuing contract teacher an extension of contract beyond the terminal date of the existing contract.

The present law and L.D. 272 do not differentiate clearly among the above terms. In order to make employment practices required by law less vague and more easily administered the three terms are specifically defined. Furthermore, our proposed draft of the law separates the procedures used in each instance whereas the present law and L.D. 272 at times deal with all three in the same section.

5. Procedure to be followed by the superintendent in notifying teacher and committee.

We believe the teacher should not be allowed an appeal to the Professional Practices Commission until after the school committee has acted on the superintendent's recommendation and has itself conducted a hearing. If the teacher is still dissatisfied, he may then appeal to the Commission.

Under L.D. 272 the superintendent must notify the teacher 15 days before the meeting at which he proposes to recommend the teacher's contract not be renewed or extended or to recommend his dismissal.

If the teacher then requests a hearing before the Professional Practices Commission, the matter never reaches the school committee until after the appeal.

This procedure by-passes the superintendent and committee and makes every dismissal or non-extension an appeal matter on the superintendent's decision, not the committee's. It seems to us this leaves the local authorities in an untenable position and puts great pressure on the superintendent to back off from previously determined recommendations.

It seems to us that an appeal should be allowed only after all local procedures are exhausted. It is a well established legal fact that one has no recourse to the courts until one has exhausted all the administrative remedies for which the law provides. Therefore, to allow an appeal before the final local authority, i.e., the school committee or school directors, have acted seems illogical and inconsistent. Furthermore, it makes it almost a certainty that the superintendent's decision will be appealed in each case since the process is so simple and the stakes so high.

6. Length of probationary period for continuing contract teachers moving to a new position in the same or in a different system.

Continuing contract teachers moving to a new position in the same or in a different system should serve a probationary period not to exceed three years. Nothing should prevent a system from giving such a teacher a continuing contract at an earlier time.

While it can be argued that once a person has served a probationary

period in one system he should always be on continuing contract or the probationary period should be reduced when he changes jobs, still each system is different and three years seems a reasonable length of time to decide whether to keep a teacher for what may be as long as 40 years.

7. Suspension should be with pay.

It might seem logical to expect that suspension should be without pay, but relying on the American tradition that one is innocent until proven guilty, we recommend that any suspension shall be with pay.

Furthermore, since suspension involves great stress and probably substantial legal expense for the individual it hardly seems fair to also remove his income. Since a suspension requires institution of dismissal proceedings within seven days or the charges are dropped and further, since a decision by the school committee or school directors to dismiss would result in termination of pay, we believe the loss to the school system, if any, would be slight and indeed could probably be recovered in the final salary settlement.

8. Challenge procedure.

The challenge procedure should be eliminated.

L.D. 272 contained an elaborate and time consuming challenge procedure to be used before the Commission heard a case. This seems to us to be unnecessary for an administrative hearing when the result can ultimately be appealed to the courts.

9. Use of certification machinery to punish unethical behavior.

Certification machinery should not be used to punish unethical behavior.

The Commissioner of Education already has the power to revoke or annul a certificate and we believe this is all that is necessary.

In most cases unethical behavior in relation to employment practices involves not just the teacher but an employing superintendent or school committee as well, so that punishment of only one party is unfair. Furthermore, the teaching profession has a responsibility to take necessary action against unethical practices itself before turning to the state for assistance.

#### A PROPOSED ACT

The following pages contain suggested wording for an act which incorporates the recommendations of the Maine Education Council.

## AN ACT CREATING THE PROFESSIONAL PRACTICES ACT FOR TEACHERS

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 20, c. 215, additional. Title 20 of the Revised Statutes is amended by adding a new chapter 215 to read as follows:

## CHAPTER 215

## PROFESSIONAL PRACTICES ACT FOR TEACHERS

## 2051. Purpose

It is the intent and purpose of the Legislature that teaching in the public school system and its related services including administering and supervising are professional services and are so designated.

## 2052. Definitions

As used in this chapter unless the context requires otherwise:

1. Administrator. "Administrator" means any teacher the majority of whose employed time is devoted to serve as superintendent, assistant superintendent, assistant to the superintendent, supervisor, principal, vice-principal or any comparable administrative position as aforementioned.

2. Superintendent. "Superintendent" means the superintendent of schools as provided for in T. 20, s. 152 or any person designated to fulfill that function.

3. Teacher. "Teacher" means any certified person qualified to teach in the public schools of this State pursuant to regulations of the State Board of Education, except persons of a probationary employment status, or holding a substandard certificate and persons acting as a superintendent of schools, who are under contract of employment with

a board of school directors or school committee in any school system of this State and are on continuing contract.

4. Commission. "Commission" means the Professional Practices Commission established under section 2060.

5. Member. "Member" means a member of the Professional Practices Commission.

6. Notice. "Notice" wherever used means notice delivered by certified mail with return receipt requested unless otherwise specifically indicated.

7. Dismissal. "Dismissal" means the termination of a valid contract (either probationary or continuing) prior to its expiration date.

8. Non-renewal. "Non-renewal" means the refusal to offer a probationary teacher a contract for the next year.

9. Non-extension. "Non-extension" means the refusal to offer a continuing contract teacher an extension of contract beyond the terminal date of the existing contract.

#### 2053. Probationary teachers

1. Nomination. The superintendent shall nominate all probationary teachers, subject to such regulations governing salaries and qualifications of teachers as the school committee or school directors shall make and, upon approval of nomination by said committee or directors, he may employ such teacher. A probationary period in any administrative unit shall not exceed 3 years.

2. Notification. Probationary teachers shall be notified prior

to April 1 of the intent of the superintendent not to nominate such individual for employment by the administrative unit for the following year. Failure to notify in writing prior to April 1 shall extend the contract automatically for one year.

3. Written statement. The superintendent shall provide the probationary teacher receiving such notification a written statement citing specific reasons for not recommending contract renewal and indicating his right to a hearing.

4. Hearing. The probationary teacher receiving such notice may request a hearing before the school directors or school committee. Such request must be made in writing within 15 days of notification. The hearing shall be private except by mutual consent and except that either or both parties may be represented by counsel. Such hearing must be granted within 30 days of the receipt of the teacher's request. A written record of the hearing shall be kept and the decision of the school committee or school directors shall be final.

#### 2054. Continuing Contract teachers

After a probationary period not to exceed 3 years, subsequent contracts of duly certified teachers shall be for not less than 2 years, and unless a duly certified teacher receives written notice to the contrary at least 6 months before the terminal date of the contract, the contract shall be automatically extended for one year and similarly in subsequent years, although the right to an extension for a longer period of time through a new contract is specifically reserved to the contracting parties.

Such written notice must include specific reasons and must indicate his right to a hearing. Any teacher who receives notice in accordance with this section that his contract is not to be extended may during the 15 days following such notification request a hearing with the school committee or school directors. The hearing shall be private except by mutual consent and except that either or both parties may be represented by counsel. Such hearing must be granted within 30 days of the receipt of the teacher's request. A written record of the hearing shall be kept.

In the event that a teacher on continuing contract is assigned a position having other certification requirements, the teacher shall retain continuing contract status in the previous area of certification, but may be required to serve a probationary term of employment not exceeding 3 years in the new position. Once the probationary period in the new position has been completed, said individual will have attained continuing contract status within that position. Nothing in this section should be construed to mean that the teacher is guaranteed a position in the previous area of certification unless a vacancy exists. If a continuing contract is offered the teacher he shall accept or reject the offer within one month.

The right to terminate a contract, after due notice of 90 days, is reserved to the superintending school committee or school directors when changes in local conditions warrant the elimination of the teaching position for which the contract was made. In case the superintendent of schools and the superintending school committee or school

directors fail to legally elect a teacher, the commissioner shall have the authority to appoint a substitute teacher who shall serve until such election is made.

#### 2055. Dismissal

1. Causes. No teacher, including a probationary teacher, may be dismissed except for cause. Dismissal procedures shall provide for written notice of reasons, request for a hearing, and hearing as in section 2054, paragraph 2.

#### 2056. Evaluation

It is the responsibility of administrators to supervise and evaluate the performance of each teacher, to bring to his attention verbally and then in writing if necessary, any cause which might lead to future dismissal, non-renewal or non-extension of contract, to assist the teacher to remove the cause if possible and allow time for correction. In determining whether the professional performance of a teacher is competent, consideration shall be given to regular and special written evaluation reports which shall be prepared in accordance with the policy and procedures of the employing school committee or school directors.

#### 2057. Teacher suspension

Whenever a superintendent has reason to believe that cause exists for the dismissal of a teacher and when he is of the opinion that the immediate suspension of the teacher is necessary, the superintendent may suspend the teacher without notice and without hearing. The superintendent shall notify the teacher in writing of the suspension.

Within 7 days after suspension except by mutual consent of the

superintendent and the teacher, the superintendent shall begin proceedings to effect the teacher's dismissal. Failure to institute proceedings shall nullify the suspension.

If sufficient grounds for dismissal are not found to exist by the employing school committee or school directors, the teacher shall be reinstated without loss of compensation.

#### 2058. Review

No school committee or school directors shall dismiss or fail to renew or extend a teacher's contract without first reviewing and considering the recommendation of the superintendent.

#### 2059. Hearing

Within 7 days from the date of notification of confirmation of dismissal or non-extension of contract following a hearing by the school committee or school directors, the teacher may request a hearing before the Professional Practices Commission by making request for a hearing to the Commissioner of Education. If no timely request for a review is made, the teacher waives the right to review and action of the school committee or school directors shall stand.

#### 2060. Commission

The State Board of Education shall appoint a Professional Practices Commission of 9 members and 3 alternates. The Commission shall represent both the profession and the public with a majority from the profession. Initial appointments shall be: 4 for one year; 4 for 2 years; and 4 for 3 years. After the original appointment a full term of office for members shall be 3 years. A member may be

reappointed to the commission for only one time. No member of the Professional Practices Commission will be allowed to hear a case involving his own legal residence or place of employment.

The Professional Practices Commission shall annually select a chairman, vice-chairman and secretary. Meetings shall be held at the call of the Commissioner or Deputy Commissioner of Education, the Professional Practices Commission chairman or upon request in writing of a majority of the commission. It shall adopt its own rules of order and procedure not inconsistent with this chapter.

Any member or alternate of the Professional Practices Commission can be removed by the State Board of Education.

The Professional Practices Commission shall hear and shall make recommendations regarding a dismissal or non-extension of contract if requested to do so by either interested party.

No member of the Professional Practices Commission shall forfeit any salary or sick leave benefits for performing his duties as a member.

Immediate expenses incurred by the employer of commission members as a result of service on the commission shall be reimbursed to the employer by the Commissioner of Education. Expenses incurred by commission members such as travel, meals and lodgings will be reimbursed according to prevailing state practices.

Funds for the operation of the commission shall be included in the Department of Education budget.

#### 2061. Request for hearing

If a request for hearing is made, the Commissioner of Education

or, in his absence, the Deputy Commissioner of Education, shall call into session the 9-member Professional Practices Commission. Seven of 9 members will constitute a quorum. If a member is unable to attend a hearing or is disqualified by reason of residence or employment, an alternate shall be designated by the Commissioner.

#### 2062. Hearing

Within 15 days following its call, the commission shall conduct a hearing to determine whether cause for dismissal or non-extension of contract exists, and shall within a reasonable time thereafter prepare and file a written report of its findings and its recommendation with the teacher, the school committee or school directors involved and the Commissioner of Education.

The chairman, acting on behalf of the commission, shall have the authority to subpoena and swear witnesses.

The teacher and the school committee or school directors are entitled to be heard and to call witnesses in their behalf. The rules of evidence shall not apply to a hearing conducted under this section.

The State Department of Education shall furnish the commission with any assistance which is reasonably required to conduct the hearing.

All parties shall be entitled to counsel at every stage of the proceedings established by this section. Each party to the case using personal legal counsel will be liable for his expenses. Hearings shall be in executive session unless both parties agree in writing that they be open to the public.

### 2063. Recommendations

Within 7 days after the school committee or school directors receive the report of the commission, they shall schedule a review of the case and within 7 days thereafter either confirm the dismissal or non-renewal or grant a new hearing.

### 2064. Hearing

The following provisions may apply to any hearing conducted by the school committee or school directors pursuant to section 2063.

1. Report. The report of the commission may be considered by the school committee or school directors.

2. Counsel. The teacher, superintendent, and the school committee or school directors may be represented by counsel.

3. Decision. At the conclusion of the hearing the school committee or school directors shall, within 7 days, render a written decision based on the evidence. A copy of the decision shall be certified to the teacher.

### 2065. Appeal

A teacher aggrieved by the decision of the school committee or school directors may appeal to the Superior Court within 30 days after notice of the decision.

R. S. T. 20 Section 161 (5) Repealed. Subsection 5 of Section 161 of Title 20 of the Revised Statutes as amended is hereby repealed.

R. S. T. 20 Section 473 (4) Repealed. Subsection 4 of Section 473 of Title 20 of the Revised Statutes as amended is hereby repealed.

S.  
D. OF R.

APPENDIX A, EXHIBIT I

STATE OF MAINE

In Senate May 9, 1969

Ordered, the House concurring, that the Maine Education Council established under chapter 452 of the public laws of 1967, is authorized and directed to conduct a comprehensive study of the Bill, "AN ACT Creating the Professional Practices Act for Teachers," H. P. 222, L.D. 272, as introduced at the regular session of the 104th Legislature; and be it further

ORDERED, that the Maine Education Council submit a written report of their findings, together with any necessary recommendations and implementing legislation, to the next regular or special session of the Legislature.

IN SENATE CHAMBER *Read*  
TABLED BY SEN. SEN. KATZ  
OF DE KENNEBEC

HOUSE OF REPRESENTATIVES  
READ AND PASSED

SP 454

MAY 9 1969

MAY 14 1969

PENDING *Passage*  
REC. ASSIGNED FOR MAY 13 1969  
DERROLD B. SPEERS, Secretary  
IN SENATE

IN CONCURRENCE  
*Bertie W. Johnson*  
CLERK

TAKEN FROM TABLE ON MOTION  
BY PRESIDENT AND ON FURTHER

MAY 13 1969

MOTION *a. Bill Passage*  
SENT DOWN FOR CONCURRENCE

*[Signature]*  
SECRETARY  
(Katz)

Name: *[Signature]*

County: Kennebec



## APPENDIX A, EXHIBIT II

AN ACT Creating the Professional Practices Act for Teachers  
(L.D. 272 - Failed to pass in the 104th Legislature)

Be it enacted by the People of the State of Maine, as follows:

R.S., T. 20, c. 215, additional. Title 20 of the Revised Statutes is amended by adding a new chapter 215 to read as follows:

## CHAPTER 215

## PROFESSIONAL PRACTICES ACT FOR TEACHERS

## 2051. Purpose

It is the intent and purpose of the Legislature that teaching in the public school system and its related services including administering and supervising are professional services and are so designated.

## 2052. Definitions

As used in this chapter unless the context requires otherwise:

1. Administrator. "Administrator" means any teacher the majority of whose employed time is devoted to serve as superintendent, assistant superintendent, assistant to the superintendent, supervisor, principal, vice-principal or any comparable administrative position as aforementioned.

2. Superintendent. "Superintendent" means the superintendent of any Maine school system, or in his absence, the person designated to fulfill his functions.

3. Teacher. "Teacher" means any person certified employable in the public schools of this State pursuant to regulations of the State Board of Education, except persons holding a probationary employment

status, conditional or comparable certificate and persons acting as a superintendent of schools, who is under contract of employment with a board of school directors or school committee in any school system of this State. and is on continuing contract.

4. Commission. "Commission" means the Professional Practices Commission established under section 2061.

5. Member. "Member" means a member of the Professional Practices Commission.

6. Notice. "Notice" wherever used means notice delivered by certified mail with return receipt requested unless otherwise specifically indicated.

2053. Failure to complete term

Any teacher, including probationary teachers, under contract to teach in a public school who fails, without just cause to ~~complete~~ com-  
ply with the term terms of the contract ~~for which the teacher contracted~~  
~~to teach~~ shall have his certificate suspended for a period of one year by the Commissioner of Education. He shall be entitled to a hearing with the Commissioner of Education if he requests one in writing within 30 days of receipt of notice of suspension. If after hearing the Commissioner finds that there has been compliance, or that there exists just cause for failure to comply with the contract he shall  
reinstate the certificate.

2054. Probationary teachers

1. Nomination. The superintendent shall nominate all probationary teachers, subject to such regulations governing salaries and

qualifications of teachers as the school committee or school directors shall make. ~~upon~~ Upon approval of nomination by said committee or directors, ~~He~~ he may employ such teacher, ~~so-nominated, subject to approval of the school committee or school directors.~~ A initial probationary period in any system shall not exceed 3 years.

2. Probation. Any teacher who has successfully achieved continuing contract status in any school system in Maine ~~will~~ may be placed on probation for not more than 19 months, if said teacher accepts employment with similar certification requirements in another school system or returns to employment after interrupted service of not more than 5 years in the former school system.

3. Notification. Probationary teachers shall be notified no later than 7 months from the effective beginning date of the contract of the intent of the superintendent not to nominate and/or the School Committee or School District not to elect such individual for employment by the school district the following year. Failure to notify in writing prior to the time limits imposed above shall extend the contract automatically for one year.

4. Written statement. ~~The superintendent so requested in writing by a probationary teacher shall provide any probationary teacher not nominated for employment with~~ The probationary teacher receiving such notification may in writing request the superintendent to provide a written statement citing specific ~~cause~~ reasons for not recommending contract renewal. Such request shall be made within 30 days of receipt of notice of non-renewal. Reasons shall be furnished within 10 days

of the teacher's request. Failure to furnish reasons shall nullify the notification given under subsection 3 above. If specific reasons are not given, the decision may be contested by the probationary teacher.

2055. Personnel on continuing contract status

In the event that a teacher on continuing contract is assigned a position having other certification requirements, the teacher shall retain continuing contract status in the previous position area of certification, but may be required to serve a probationary term of employment not exceeding 3 years in the new position. Once the probationary period in the new position has been completed, said individual will have attained continuing contract status within that position.

Failure to take action to ~~offer or~~ deny a continuing contract prior to March 1st shall cause contract to be extended automatically for one year and similarly in subsequent years, although the right to an extension for a longer period of time through a new contract is specifically reserved to the contracting parties. If a continuing contract is offered the teacher he shall accept or reject the offer on or before April 1st. Notice of intent not to extend the contract must be given before March 1st.

Add new paragraph 3

The right to terminate a contract, after due notice of 90 days, is reserved to the superintending school committee or school directors when changes in local conditions warrant the elimination of the teaching position for which the contract was made. In case the

superintendent of schools and the superintending school committee or school directors fail to legally elect a teacher, the commissioner shall have the authority to appoint a substitute teacher who shall serve until such election is made.

2056. Causes for dismissal

1. Causes. No teacher including a probationary teacher may be dismissed during a school year nor any continuing contract teacher be denied a contract offer, except for cause. Cause may be:

- A. Incompetence;
- B. Immoral conduct;
- C. Teacher conduct which in fact impairs his ability to teach in the school;
- D. Failure to attend to duties or failure to carry out reasonable orders and directions of the superintendent and the school board;
- E. Physical or mental disability, as established by competent medical evidence;
- F. Elimination of the position to which the teacher was appointed if no other position exists to which he may be appointed, if qualified provided 90 days' notice is given;
- G. Loss ~~of~~ of certification;
- H. A violation of the Code of Ethics of the Education Profession as interpreted from the written code of the profession.

2057. Evaluation

It is the ~~responsibility~~ responsibility of administrators to supervise and evaluate the performance of each teacher, to bring to his

attention verbally and then in writing if necessary, any cause which might lead to future dismissal or nonextension ~~or~~ of contract, to assist the teacher to remove the cause if possible and allow time for correction. In determining whether the professional performance of a teacher is competent, consideration shall be given to regular and special written evaluation reports which shall be prepared in ~~aeerdance~~ accordance with the policy and procedures of the employing school board.

2058. Teacher suspension

**Whenever** a superintendent has reason to believe that cause exists for the dismissal of a teacher and when he is of the opinion that the immediate suspension of the teacher is necessary, the superintendent may suspend the teacher without notice and without hearing. The superintendent shall notify the teacher in writing of the suspension.

Within 5 7 days after suspension except by mutual consent of the superintendent and the teacher, the superintendent shall begin proceedings to effect the teacher's dismissal. Failure to institute proceedings shall nullify the suspension.

If sufficient grounds for dismissal are not found to exist by the employing school board, the teacher shall be reinstated ~~without-loss-of~~ ~~compensation~~ and the personnel record of the teacher will be expunged regarding this case.

2059. Review

No school committee or school directors shall dismiss or fail to reemploy a ~~continuing-contract~~ teacher without first reviewing and considering the recommendation of the superintendent. Not less than fifteen days prior to recommending to a board that it dismiss any

teacher ~~including a probationary teacher~~ or not reemploy a ~~continuing contract~~ teacher, the superintendent shall give written notice to the ~~individual~~ teacher, by registered or certified mail or deliver in the presence of a witness his recommendation stating the cause therefor, and advising the ~~person~~ teacher of his right to review by the Professional Practices Commission. Dismissal of a probationary teacher during the term of the contract shall be in accordance with the provisions of this section.

#### 2060. Hearing

Within 5 7 days ~~from the date the superintendent's recommendation is issued, the individual as identified in section 2059~~ thereafter the teacher or the superintendent may request a hearing before the Professional Practices Commission by making request for a hearing to the Commissioner of Education. If no timely request for a review is made, the teacher ~~or the superintendent~~ waives the right to review and the superintendent shall file his recommendation with the school board. If a request for a review is made, the superintendent need not file his ~~formal~~ recommendation with the school board until a report of the Professional Practices Commission is filed with him.

#### 2061. Commission

The State Board of Education shall appoint a Professional Practices Commission no later than August 1st each year of 9 alternates from a list of 45 names, 5 names for each position, submitted initially no later than June 1st by the ~~state association~~ organization representing the majority of the teachers in the state. Thereafter, 12 names per

year shall be submitted by June 1st each year to fill the terms of office on the Professional Practices Commission. A person in order to be qualified for appointment to the commission or designated as an alternate must have 5 years of service prior to initial appointment, shall hold a certificate authorizing him to teach in the State of Maine or be a member of the faculty of an approved teacher education institution in Maine. The commission shall be composed of 4 teachers, a minimum of 3 classroom teachers and one teacher from the special services area, 3 school administrators, one member of faculties representing Maine colleges or universities approved for teacher education, and one member representing the Maine Advisory Committee on Teacher Education and Certification. Initial appointments shall be: 3 for one year; 3 for 2 years; and 3 for 3 years. After the original appointment a full term of office for members and alternates shall be 3 years. A member may be reappointed to the commission for only one time. No member of the Professional Practices Commission will be allowed to hear a case involving ~~their~~ his own legal residence or place of employment. The list of alternates will be used to fill a vacancy for an unexpired term of office.

The Professional Practices Commission shall annually select a chairman, vice-chairman and secretary. Meetings shall be held at the call of the Commissioner or Deputy Commissioner of Education, the Professional Practices Commission chairman or upon request in writing of a majority of the commission. It shall adopt its own rules of order and procedure not inconsistent with this chapter.

Any member or alternate of the Professional Practices Commission can be removed by the State Board of Education after a hearing.

The Professional Practices Commission shall hear and shall make recommendations regarding a pending dismissal or non-extension of contract if requested to do so by either interested party.

All proceedings brought under this chapter shall be financed by the fees collected from the issuance of teacher certificates. No ~~panel~~ member of the Professional Practices Commission shall forfeit any salary or sick leave benefits for performing his duties as a ~~panel~~ member.

Immediate expenses incurred by the employer of commission members as a result of service on the commission shall be reimbursed to the employer by the Commissioner of Education. Expenses incurred by commission members such as travel, meals and lodgings will be reimbursed according to prevailing state practices.

The Commissioner of Education shall receive and account for all moneys derived from the collection of certification fees and shall pay the same, as provided by law, to the Treasurer of State, who shall keep such moneys in a separate fund to be known as the "Professional Practices Commission Fund." The Commissioner of Education shall receive an allowance for clerical hire as recommended by the commission in addition to the expenses provided in the preceding paragraph. The Commissioner of Education may make other expenditures from this fund, upon itemized vouchers approved by the commission, which in the opinion of the Commissioner of Education are reasonably necessary for the

proper performance of its duties under this chapter. If any such funds are not expended during the year in which they were collected, the unexpended balance shall not lapse, but shall be carried as a continuing account available for the purposes specified, until expended.

#### 2062. Request for review

If a request for review is made, the Commissioner of Education or, in his absence, the Deputy Commissioner of Education shall call into session the 9-member Professional Practices Commission. Seven of 9 members will constitute a quorum.

The teacher and the superintendent may each challenge not more than 3 members of the Professional Practices Commission. ~~and the Commissioner of Education shall not appoint any challenged person to the panel.~~ Challenge shall be made in writing and submitted to the Commission at least 7 days before the hearing. If a ~~panel~~ member is challenged or unable to attend a hearing, his alternate shall serve in his stead.

#### 2063. Hearing

Within 15 days following its ~~designation~~ call, the ~~panel~~ commission shall conduct a hearing to determine whether cause for dismissal or nonextension of contract exists, and shall within a reasonable time thereafter prepare and file a written report of its findings and its recommendation for a decision with the teacher, the superintendent involved and the Commissioner of Education.

The chairman, acting on behalf of the ~~panel~~ commission, shall have

the authority to subpoena and swear witnesses.

The teacher and the superintendent are entitled to be heard and to call witnesses in their behalf. ~~A fair hearing shall be held and the technical~~ The rules of evidence need shall not apply to a hearing conducted under this section.

The State Department of Education shall furnish the ~~panel~~ commission with any assistance which is reasonably required to conduct the hearing.

All parties shall be entitled to counsel at every stage of the proceedings established by this section. Each party to the case using personal legal counsel will be liable for his expense. Hearings shall be in executive session unless both parties agree in writing that they be open to the public.

#### 2064. Recommendations

Within 5 7 days after the superintendent receives the report of the ~~panel~~ commission he shall either withdraw his charges against the teacher and so notify him in writing or file his final recommendation with the school board along with a copy of the ~~panel's~~ commission's report.

Within 7 days after receipt of the recommendations of the superintendent and the report of the ~~panel~~ commission, the employing school board shall notify the teacher by certified mail or deliver in the presence of a witness, the recommendation of the superintendent.

The teacher may, within 5 7 days after receipt of the board notice, request in writing a hearing before the board.

Within 7 days after receipt of such request the board shall set a

time and place for a hearing ~~within 7 days~~ and notify the superintendent and the teacher of the same. Said hearing shall be held within 7 days of the date of such notice.

The board may act without a hearing if the teacher does not make a timely request for one.

#### 2065. Hearing

The following provisions may apply to any hearing conducted by the school board pursuant to section ~~2062~~ 2064.

1. ~~Report as evidence.~~ The report of the ~~review-panel~~ commission may be considered ~~as evidence~~ by the board.

2. Counsel. The teacher, superintendent, and the school board may be represented by counsel.

3. Decision. At the conclusion of the hearing the school board shall, within ~~5~~ 7 days, render a written decision based on the evidence. A copy of the decision shall be ~~given~~ certified to the teacher and the superintendent.

#### 2066. Appeal

~~A teacher aggrieved by the decision of the school board may apply to the District Court within 30 days after the action complained of has been taken, by a sworn petition setting forth that such action is illegal, unreasonable or arbitrary, and specifying the grounds upon which the petition rests.~~ A teacher aggrieved by the decision of the school board may appeal to the Superior Court within 30 days after notice of the decision.

R. S. T. 20 Section 161 (5) Repealed. Subsection 5 of Section 161

of Title 20 of the Revised Statutes as amended is hereby repealed.

R. S. T. 20 Section 473 (4) Repealed. Subsection 4 of Section 473  
of Title 20 of the Revised Statutes as amended is hereby repealed.



## APPENDIX A

## EXHIBIT III

March 11, 1970

The attached letter was sent to the following, with three copies of the proposal:

Mr. John Salisbury, Executive Secretary  
Maine Municipal Association  
89 Water Street  
Hallowell, Maine 04347

Mr. Robert Montminy  
A.F.S.C.M.E., AFL/CIO  
16 Bangor Street  
Augusta, Maine 04330

Mr. William T. Logan, Commissioner  
of Education  
State Department of Education  
Augusta, Maine 04330

Mr. Gerald Davis  
Portland High School  
Portland, Maine (AE of T)

Dr. John Marvin  
Executive Secretary  
Maine Teachers Association  
Augusta, Maine 04330

Professor John Lindlof  
University of Maine  
Orono, Maine 04473 (UMP)

Mr. Lee Hallowell  
Maine School Superintendents  
Brewer, Maine

Mr. William Hardy  
Maine State Employees Association  
65 State Street  
Augusta, Maine 04330

Dr. Carl Porter-Shirley, Executive Secretary  
Maine School Boards Association  
University of Maine  
Orono, Maine 04473

Mr. Raymond Farnham  
State Principals Association  
15 Western Avenue  
Augusta, Maine 04330

Mr. Harold Blood, President  
Elementary Principals Association  
Dow Lane School  
Bangor, Maine 04401

Mr. Roger Snow, Coordinator  
Bureau of Labor Education  
University of Maine Portland-Gorham  
Portland, Maine 04103



## MAINE EDUCATION COUNCIL

March 11, 1970

The Maine Education Council was directed by the 104th Legislature to study the proposal for a Professional Practices Act and report their findings to the 105th Legislature. I have been assigned by the Council the task of preparing the first draft of this report. In order to do that, we are trying to obtain reactions and comments from any and all groups which might have any interest in this act.

If your organization would like to take an official position on this act, or to make suggestions to us, we will be pleased to receive them. In order that you may have a frame of reference, copies of the proposed act, which failed of passage in the 104th, are enclosed herewith. If you need additional copies for study, they can be made available.

It is necessary that I present a preliminary report to the Maine Education Council at their meeting of April 24. It will therefore be necessary that I receive any reactions you have not later than April 3.

Your assistance in this matter is appreciated.

Very truly yours,

Carroll R. McGary  
For the Maine Education Council



## APPENDIX B

STATE OF MAINE  
CUMBERLAND, SS

SUPERIOR COURT  
Civil Action,  
Docket No. 70-470

FREEPORT SCHOOL COMMITTEE

VS.

FREEPORT TEACHERS ASSOCIATION

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APPEARANCES

R. Paul Frinsko, Esquire of Bernstein, Shur, Sawyer and Nelson  
443 Congress Street  
Portland, Maine - for Freeport School  
Committee

Frank Chapman, Esquire 284 Water Street, Augusta, Maine for  
Freeport Teachers Association

Hearing held before MR. JUSTICE POMEROY in the  
Supreme Judicial Courtroom, Portland, on May 15, 1970.



STATE OF MAINE  
CUMBERLAND, SS

SUPERIOR COURT  
Civil Action,  
Docket No. 70-470

FREEPORT SCHOOL COMMITTEE :  
 :  
 vs. :  
 :  
 FREEPORT TEACHERS ASSOCIATION :

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This matter came on for hearing before the Honorable Charles A. Pomeroy, Justice, Supreme Judicial Court on Friday, May 15, 1970, in the Supreme Judicial Courtroom, Portland, Maine

- APPEARANCES -

R. Paul Frinsko, Esquire of Bernstein, Shur, Sawyer and Nelson  
443 Congress Street  
Portland, Maine - for Freeport  
School Committee

Frank Chapman, Esquire 284 Water Street, Augusta, Maine for  
Freeport Teachers Association



THE COURT: I am told there are a number of persons in the courtroom whom I have not previously seen who have a direct interest - I mean by that, teachers and perhaps parents of students in the school, and sometimes both, who at the moment are completely unaware of what has been transpiring. I am sure that counsel joins with me in thanking you for your patience.

It frequently appears to parties in proceedings that the Court is wasting its time and their time because when the Court doesn't appear, there's a natural assumption that anything you can't see happening isn't happening. Actually, I am sure that everyone involved at this point has a headache, and I mean a physical headache, and we have been working, I assure you, quite diligently since the very early part of the afternoon.

Yesterday afternoon, or yesterday noon actually, starting at about eleven o'clock, a one sided, what we call in law an expedite, hearing was held on a very very narrow legal issue resulting in the issuance by me of an order which in effect prohibited the doing of certain things by the Teachers' Association that the law says they weren't to be permitted to do anyway. That did not constitute an adjudication either that you had done anything or were going to do anything. There was an issue raised in that, as in all expedite proceedings of that type, entirely divorced from the requirement of a conclusion that the allegations in the petition were true. It did not require a fact finding, and there were not facts found that the Teachers' Association was doing anything which was not permitted under

law. The effect of the injunction was to say, if you have any idea of doing such a thing, forget it, because it is not permitted.

Because the proceeding was experte, one sided, the other side having no opportunity to be heard, the restraining order was very limited in its time application. The matter was assigned for hearing at four o'clock this afternoon initially, because the time was selected, even though it's a most unusual time - actually most courts outside the State of Maine close at four o'clock - but it was set at four o'clock in order to enable teachers, who are most vitally interested, to be physically present, and not as matter of convenience to the Court or anything else. That was the reason for the unusual time.

Counsel jointly called me earlier today and requested a conference starting at two o'clock - actually they showed up a little bit before two o'clock. There were present: The Chairman of the School Board, the Vice Chairman of the School Board, the President of the Teachers' Association, and the Vice Chairman, I believe, of the Teachers' Association.

A very brief discussion of the legal issues took place between counsel and the Court, after which the **discussions** were continued with the Chairman of the School Board, the Vice Chairman of the School Board, and the President and Vice-President of the Teachers' Association, present and participating actively.

It was explained to the Court, and at this point both interested groups realized that the situation was a very grave one, that the potential loss from a stand-off or inability to reach some

amicable settlement was likely to fall on the completely innocent in the controversy, the school children, and with that idea in mind, I am able to say that both groups who were present at the conference approached their problems with the potential loss to the students, who were unre-presented, very much in mind, so there was a desire to be reasonable and cooperative, one with the other, and with the Court.

It is understood the immediate principal controversy involved the failure, and I'll not try to go into detail, but to briefly recite it for the record, the controversy involved the failure of the Superintendent of School Committee to renew contracts of three persons who are teachers, and one who is in a supervisory capacity. I believe it was quite quickly agreed that the contract which has been negotiated between the Teachers' Association and the Superintendent of School Committee related exclusively to the teachers, that is to say, the one person who is in a supervisory capacity was not a person who was covered by a contract, so that whatever rights and obligations were upon the respective parties were as a result of considerations outside the contract. Am I correct, counsel?

MR. CHAPMAN: Yes, Your Honor.

MR. FRINSKO: Yes, Your Honor.

THE COURT: Nevertheless, there was a discussion of the rights of that individual and any person so situated. It was explained, and there seems to be now no dispute, but that the teachers as a matter of right are entitled to a hearing.

The word "hearing" has been defined by our courts. The

standards under which a hearing can be conducted have been well defined; I won't bother to go into them at this time, but there is no disposition on the part of the school board evidenced, to thwart the right to a hearing. My understanding is that a hearing under the appropriate safeguards as to the rights of all parties will, in fact, be had at a time and place to be assigned, I assume, reasonably soon.

I might say simply as a matter of general information that there is as a matter of law, a right of appeal or a right of review of any such hearing. It is hoped that any review would not be necessary, that the hearing would result in a finding which would be completely satisfactory both to those involved on the one side, and those involved on the other. Nevertheless, it is understood and agreed, and I have been informed, that plans are specifically under way for a hearing involving not only the three teachers, but also the administrative officer whose rights arise outside the contract.

There was discussion of other matters which were not appropriately labeled as grievances, they were more conditions than grievances. I was present during only a portion of those discussions. I deliberately absented myself from the room in order to permit a freer discussion between the attorneys and the representatives of the various groups without the inhibitions which might possibly result from my presence. Since when I was invited to return to the conference room, I found smiling faces rather than blood and gore all over the place, I quite quickly concluded that the conference in my absence had been a successful and a fruitful one. Exactly what it was, I cannot tell you

any more than you can tell me, because I, like you, was not present.

It is apparent to the Court that there is no longer need for any further restraining order. The restraining order which I issued yesterday is revoked and will not be extended. The order will expire as of this time that I make this decision. Council will prepare a brief order dismissing -- lifting the restraining order, so there will be no extension of it on the basis that there is no reason for it.

I am quite aware, both from newspaper reading and also as a result of what was said in my presence by the parties, that there has been a rather considerable direct involvement in the situation by persons who occupy no official status in the town, but are simply citizens and taxpayers, and I use the word "simply," not intending in any way to indicate a lessening of their importance, because without citizens and taxpayers, we couldn't exist, but in any event, they are not persons holding official positions. Now, obviously, they are outside -- I'm speaking now of citizens and parents who are obviously disturbed, and rightfully so -- they are outside the jurisdiction of the court, they are not parties to the litigation. It is quite obvious also that neither the School Board nor the Teachers' Association has any direct control over them. The representatives of the School Board and the representatives of the Teachers' Association obviously coming into a conference of this kind are only authorized to speak with reference to the issues concerning which there has been prior authorization from the group whom they represent, so the limit of their authority has stopped with what I have told you up to this point.

In the hope that perhaps something I say might do some little bit, at least to improve the climate, I would urge all persons who are not in the jurisdiction of the Court, particularly parents and students, to please be patient, to return their children to school. They may be assured, and are assured by me that both continuing parties are approaching their differences with an earnest desire to do what is best for all citizens, especially the students.

Perhaps the least that is said is the best thing that can be expected, because it seems that where the parties are talking, where they are well on their way to an adjustment of such differences as have arisen, and I realize their differences go beyond the immediate issues, that is to say, the teachers' tenure about which I have spoken, but where there is an understanding being reached, where there is communication, where the parties are talking, and are obviously talking in good faith, where they understand the limitations which the law has placed on their activities on both sides, where they are now perhaps even for the first time well informed and understand the respective spheres in which they must operate, and the responsibilities which are on upon each, and realize that there can be no, in law, no trespass permitted by one group on the responsibilities of the other, I think the Town has a right to be confident that we will once again have a school system in Freeport of which all citizens of Freeport, and all citizens of Maine, can be just as proud.

We will adjourn. Counsel will please prepare the necessary orders. Is there something further?

MR. CHAPMAN: No, Your Honor.

THE COURT: We will recess.

CERTIFICATE

I hereby certify that the foregoing  
is a true and accurate transcript  
of my stenographic notes taken at  
the time and place herein set forth.

/s/ Arlene T. Edes

Official Court Reporter