

MAINE STATE LEGISLATURE

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State of Maine
Senate Chamber
Augusta, Maine 04330

January 22, 1975

Senator Jerrold B. Speers, Chairman
Legislative Council
State House
Augusta, Maine

Dear Senator Speers:

In accordance with Senate Paper 929, directing the Committee on Education to study the subject-matter of L.D. 2432, "AN ACT Abolishing the State Board of Education and Creating an Advisory Board," I enclose herein the final report of the Committee.

Respectfully submitted,

A handwritten signature in cursive script, reading "Bennett D. Katz", written over a horizontal line.

BENNETT D. KATZ
Chairman

BDK/ac

REPORT OF THE COMMITTEE ON EDUCATION
ON ITS STUDY OF THE SUBJECT MATTER OF L.D.
2432: AN ACT ABOLISHING THE STATE BOARD OF
EDUCATION AND CREATING AN ADVISORY BOARD

Senate

Bennett D. Katz, Chairman
Richard B. Olfene
Carroll E. Minkowsky

House

Elmont S. Tyndale, Chairman
Roy A. Bither
Robert C. Ferris
Joyce E. Lewis
David R. Ault
William R. Lawry
Arthur P. Lynch
Frank J. Murray
Bertrand M. LaCharite
Armand A. LeBlanc

Submitted to the
Legislative Council
107th Legislature

January 22, 1975

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Section I

Origin of
the study:

The Joint Standing Committee on Education was directed to study (Senate Paper 929) the subject-matter of L.D. 2432, "An Act Abolishing the State Board of Education and Creating an Advisory Board," (see Appendix A) and to report the results of its study to the 107th Legislature.

L.D. 2432 was intended to implement Recommendations #1 and #2, Department of Educational and Cultural Services of the Maine Management and Cost Survey. Recommendation #1 would have divested the Board of Education of its present authority over matters affecting the department. Recommendation #2 would have defined the role of the Board of Education as advisory to the Commissioner.

Reasoning sup-
porting the
Recommendations:

The Maine Management and Cost Survey's recommendations were based on what it perceived as an absence of and a need for sound management practices. Presently, the Commissioner of the Department of Educational and Cultural Services is appointed by and responsible to the Governor. The State Board of Education, however, also exercises substantial direct authority in ways which influence the effectiveness of the department. The Commissioner is, therefore, responsible for

a department over which he does not have complete authority, and he is responsible to both the Governor and the State Board. The Survey argues that sound management practice strongly favors a single line of authority, rather than this existing dual reporting relationship.

To achieve a single line of authority, the Survey first makes a distinction between the concepts of policy-making and management-authority. The Survey suggests that a policy-making board should be advisory, while a board with management-authority should wield administrative power. In the case of the State Board, the Survey argues that these two concepts have become confused and the result is a board which exercises both policy-making and administrative powers. The statutory duties of the State Board unnecessarily overlap those of the Commissioner, and both Board and Commissioner suffer a dilution of authority and responsibility.

To dissolve this problem of shared authority, the Survey invokes the distinction between a policy-making and an administrative board. Finding that the programs and decisions of the department have significant effects on the costs and quality

3.

of public education, the Survey endorses the concept of public involvement in the policy-making process of the department. According to the Survey, the access to informed opinion and to the interchange of ideas provided by public involvement is essential to effective policy-making. Public participation in policy-making, however, requires a Board with simply an advisory status. Accordingly, the Survey advocates the creation of an advisory board of education.

With the creation of an advisory board of education, the two existing problems, as perceived by the Survey, are eliminated. The single line of authority required by good management principles is achieved and the public involvement in policy-making is maintained.

Course of study
adopted by the
Committee:

In its approach the Maine Management and Cost Survey asked how public participation in policy formation could be made commensurate with the necessity for sound management practices and then presented one answer. At the outset, the Committee on Education accepted the Survey's framing of this central question but sought

Instead to evaluate a range a possible answers.

The committee initially identified 4 distinct responses to the original question:

1. Accept the existing blend of duties assigned to the State Board as an admittedly confusing but nonetheless workable system and make no changes.
2. Strip the Board of its existing authority and create an advisory board as recommended by the Survey.
3. Transfer all administrative duties of the Board to the Commissioner and otherwise leave the Board's authority intact.
4. Make the State Board automonous, in a way analogous to the University of Maine Board of Trustees.

With varying stresses on management or public participation, each of these alternatives responds to the central problem as posed by the Survey.

In order to carefully evaluate these alternatives, the committee studied the origin and development of the present State Board, informed itself about the existence, composition and authority of all other state boards, compared the workings of a typical advisory board with the present state board, and examined the characteristics of governing boards outside the area of public education. In addition, to familiarize itself with the existing powers of the State

Board and to identify the specific areas of blurred managerial responsibility between the Board and the Commissioner, the committee identified all of the State Board's duties and classified them as advisory, policy-making or administrative.

In examining the history of the present State Board (see Appendix B), the committee found that, since its revival in 1949, the Board has exercised advisory, policy-making and administrative duties. Successive legislatures have assigned new powers in each of these categories, in some instances with care and in others in a somewhat random and unconsidered way. Similarly, legislatures have removed and reassigned duties which formerly rested with the Board. In spite of this changing array of duties voted by different legislatures, two strong threads run throughout the history of legislative action involving the State Board. First, public participation as members of the Board has been consistently expanded since the board was revived. Although no public members were required on the first board, in contrast, the membership of the present board must be "broadly representative of the public." (20 MRSA

§ 51, sub. § 1) Second, the legislature has clearly indicated that a policy-making role demands more than merely advisory status.

The committee's consideration of the practices of other states (see Appendix C) has reinforced its findings about the history of the Maine State Board. Only one state does not now have a State Board of Education. The majority of states have State Boards which exercise general control and supervision of public education. Further, in recent years several states which had previously preferred an advisory board have created significantly strengthened boards with policy-making authority.

The Committee studied the workings of a typical advisory board in order to assess the effect that such a status might have on the present State Board. The Survey argued that of all the Boards in the Department of Educational and Cultural Services only the State Board enjoyed something more than advisory powers. Yet, the Survey concluded, these other boards functioned effec-

tively. The committee found that although an advisory board may provide a measure of involvement for its members and may contribute needed informed opinion, such a board clearly does not formulate policy.

Finding no examples in the area of public education of an advisory board which also makes policy, the committee turned to an examination of governing boards in general. The committee reviewed the authority of corporate, institutional and government boards and found that significant policy-making involvement by any board was inversely proportional to the autonomy of management. As the autonomy of management expanded, the area and real effectiveness of a board's policy-making actions diminished.

Reassessment
of the problem
as posed by
the survey:

The committee's study of the history of the State Board, the practices of other states, the work

of a typical advisory board and the patterns of authority of governing boards outside the area of public education resulted in a reappraisal and rejection of the central question as posed by the Survey. The Survey had asked how public participation could be made commensurate with the necessity for sound management practices. In answering the question, the Survey advanced an exhaustive dichotomy which linked policy-making with an advisory status and management-authority with administration or execution of policy.

From the standpoint of simply improved management structures, the Survey's identification of the central question as well as the answer which it proposes are both reasonable and consistent. The committee, however, as representative of the public, has an obligation to look beyond the perspective of sound management. For the committee, therefore, the central question of the study must be what type of board does the public's deep interest in education deserve and require.

Having reformulated this question, the committee then reassessed the dichotomy presented by the Survey. Since the committee had found advisory

boards consistently deficient in policy-making power, the concept of a policy-making advisory board, as proposed by the Survey, was judged unacceptable as a substitute for the existing State Board.

Two roles; policy formulation and administration:

With the idea that a strong and effective State Board should formulate policy and leave administration to the Commissioner and the department, the committee attempted to identify each of the Board's existing duties as advisory, policy-making, or administrative. In practice, however, the committee found that certain duties resisted such neat categories. In addition, the committee identified other duties which, although unquestionably administrative, were of sufficient significance to justify a continuing State Board involvement. The specific instances of duties infused with elements of both policy and administration and the clearly administrative duties which were considered properly within the board's responsibilities are discussed in Section II, where the committee's recommendations are presented.

In its review of Title 20, the committee has found a number of administrative duties which

have been unnecessarily assigned to the State Board. In these cases we recommend that they be transferred to the Commissioner and the staff of the department.

In addition to its responsibilities in primary and secondary education and its role as a board of trustees for the vocational technical institutes, the State Board has certain other powers in the area of postsecondary education. The committee believes that such duties will be most effectively exercised by a permanent postsecondary education commission. Accordingly, we recommend that these powers should be transferred to such a commission.

Final
Thoughts:

The changes contained in our recommendations will leave the State Board with a mixture of advisory, policy-making and administrative powers. Some may argue that our rejection of the strategy of maximizing sound management practice at the expense of meaningful public involvement in educational policy-making may increase the costs to the taxpayer. We have been unable to document any such dollar savings and, therefore, must disagree. We see the recommendations as simply

an effort to improve the formal management structure. The purely management approach, however, ignores the fundamental place of education in our society. We believe that the concept of a completely professional educational establishment with public access limited to an advisory board role is contrary to the desires and needs of Maine citizens. Our recommendations endorse the concept of strong public participation in policy-making and limited, though individually significant, involvement in administration. These recommendations reaffirm our deep conviction that education should remain in the hands of the people.

Section II

RECOMMENDATIONS AND REASONING OF THE COMMITTEE

Format:

Each recommendation of the committee refers to a specific section of Title 20 of the Maine Revised Statutes Annotated. For each recommendation, the section is identified and either quoted or paraphrased. The committee's recommendation is then stated and explained.

Many of the powers of the State Board are set out in several paragraphs (A,B,C & D) of section 51. For purposes of easy reference we have identified each of these powers by appending a small letter (a,b,c,etc) after the 51. The small letters are merely a convenience for the reader and should not be taken as referring to small letters in the statutes.

Recommendations
and reasoning:

51. sub-1

"The membership of the board shall be broadly representative of the public. No person who earns a substantial portion of his income as a teacher or as an administrator in an educational institution, other than as a college president, shall be eligible for appointment or service under this section."

Committee
recommendation:

The committee believes that the state board, without exception, should be representative of the

general public. The exception which allows membership by a college president should, therefore, be deleted.

51c: "Establish, maintain and operate state technical and vocational institutes and schools of practical nursing."

Committee
recommendation:

In this instance the board has both policy-making and administrative responsibilities. The committee finds that these administrative duties are properly within the scope of the board's activities and recommends that they should be retained. In addition, the committee recommends that the board's authority should be expanded so that personnel can be transferred without legislative approval.

51d: "Act upon applications for additions to and dissolution of School Administrative Districts."

Committee
recommendation:

Action upon applications should be retained by the board. The dissolution of an S.A.D. is an administrative matter, however, and State Board involvement is unnecessary. Section 51r provides an appeal route to the State Board if a party to an addition or dissolution is unsatisfied. The committee recommends that the role of the board in dissolutions of S.A.D.'s should be transferred to the Commissioner.

51f: "Adjust subsidy to an administrative unit when the expenditures for education in such unit show evidence of manipulation to gain an unfair advantage or are adjudged excessive."

Committee
recommendation:

Section 1901 of Title 20, MRSA assigns this duty to the commissioner. An appeal route to the State Board is retained in section 51r. The duty is administrative and is properly assigned to the commissioner. The committee recommends that the assignment of this duty to the board should be deleted.

51j: "Approve projects for state construction aid."

Committee
recommendation:

Presently, the board approves the standards for school construction and also the individual projects as they are proposed. Although the committee finds that the approval of individual projects is clearly an administrative duty, we believe that the substantial state involvement in school construction justifies continued state board participation. The committee recommends that the state board should continue to approve individual school construction projects.

51 l: "Approve isolated schools."

Committee
recommendation:

The state board should establish the criteria for isolated school status. The approval process is administrative, however, and board involvement is unnecessary. An appeal to the State Board in section 51 r remains intact for any party unsatisfied with the department's decision. The committee recommends that the approval of isolated schools should be transferred to the commissioner.

51 m: "Obtain information regarding applications for granting degrees and make a recommendation to the Legislature."

Committee
recommendation:

The responsibilities of the State Board should be limited to primary, secondary and vocational education. Duties relating to the whole area of postsecondary education are properly exercised by a postsecondary education commission (a so-called #1202 commission). The committee recommends that this authority to obtain degree-granting information and make appropriate recommendations should be transferred to a postsecondary education commission.

51 o:

"Establish a student loan insurance program."

Committee
recommendation:

For the same reasons given under 51m, the committee recommends that this duty should be transferred to a postsecondary education commission.

51p:

"Serve as state agency for administering federal funds."

Committee
recommendation:

Since the responsibility for postsecondary education will be assumed by a postsecondary education commission, the authority for administering Federal postsecondary education funds should be similarly assumed. The committee recommends that the authority for administering Federal funds for postsecondary education should be transferred to a postsecondary education commission.

51s:

"Serve as sole agency for administration of any Federal funds as provided in section 3762."

Committee
recommendation:

For the same reasons given under 51p, the committee recommends that the authority for administering Federal funds for postsecondary education should be transferred to a postsecondary education commission.

57:

See 51c above.

102; sub-§ 16: "Bilingual instructors shall be subject to section 59 requiring certification of teachers by the State Board of Education, in both course content and language of instruction."

Committee
recommendation:

This section is incorrectly drafted. The commissioner, not the State Board, certifies teachers under section 59. Certification is properly an administrative process and the board is mistakenly invoked. The committee recommends that the language should be deleted.

222.

See 51d above.

301, 301-A, 305:

These sections describe the apportionment procedures required in S.A.D. voting.

Committee
recommendation:

The processes are elaborately described and wholly administrative. The State Board is unnecessarily involved. The committee recommends that these duties should be transferred to the commissioner.

916:

"The Commissioner of Educational and Cultural Services, with the approval of the Board of Education, shall establish requirements for accreditation,...."

Committee
recommendation:

Section 5le assigns the duty to establish such requirements to the State Board. The language of section 916 is, therefore inconsistent with 5le. The board should establish these requirements and the commissioner should administer them by acting on accreditation applications. An appeal route to the board in section 5lr remains intact for a party dissatisfied with the commissioner's decision. The committee recommends that the language of section 916 should be changed to be consistent with section 5le.

1281:

This section assigns the power to grant changes in the minimum school year and to approve applications for geographical isolation status to the State Board.

Committee
recommendation:

To be consistent with the committee recommendation under 51 L, the authority to approve isolated schools should be transferred to the Commissioner. The state board should be granted the authority to establish the criteria for isolated school status. In addition, the commissioner should be given the authority to waive the requirements for the minimum school year.

1901

See 51f above.

Committee
recommendation:

In addition to the recommendation given under 51f above, the committee recommends that the vestigial language describing the minimum salary schedule should be deleted.

2021.

This section authorizes the commissioner to enter into interstate personnel compacts only with the approval of the board.

Committee
recommendation:

Such compacts are an extension of certification, a power which has been assigned to the commissioner. Since certification is the sole responsibility of the commissioner, State Board involvement is unnecessary. The committee recommends that references to board approval should be deleted.

2202.

See 51 m above.

2231-2235:

See 51 o above.

2355:

See 51 c above.

2356:

The board is assigned broad policy-making and administrative powers in the area of secondary vocational education.

Committee
recommendation:

The committee recognizes that the board exercises clearly administrative duties under this section but finds that such responsibilities are properly assigned. The committee recommends that the State Board continue its authority over vocational education.

2703-2704:

The State Board is designated as a sole state agency for administration of National Defense Education Act (NDEA) money.

Committee
recommendation:

For the same reasons given under section 51 p, the committee recommends that this authority should be transferred to a postsecondary education commission.

3455:

"The State Board is authorized to make payments to the Maine School Building Authority when an administrative unit is late on its payments."

Committee
recommendation:

The procedure described in this section is administrative and the State Board involvement is unnecessary. The committee recommends that this authority should be transferred to the commissioner.

3457, 3458, 3460:

See 51j above.

3672, 3673, 3674:

See 51s above.

3713:

The State Board is assigned the authority to determine geographic isolation.

Committee
recommendation:

The language is inconsistent with the committee's recommendations under section 51 l and 1281. The State Board should establish guidelines and the commissioner should administer those guidelines. An appeal to the board from the commissioner's decisions exists under section 51 r. The committee recommends that the language of this section should reflect the recommendations given under 51 l and 1281.

Section III

AN ACT to Amend the Powers of the State Board of Education

Sec. 1. 20 MRSA §51, as enacted by PL 1972, c. 610, §4, is amended to read:

§51. State Board of Education

1. Board. There is created a State Board of Education which shall consist of 9 members who shall be appointed by the Governor with the advice and consent of the Council. The membership of the board shall be broadly representative of the public. No person who earns a substantial portion of his income as a teacher or as an administrator in an educational institution, ~~other than as a college president,~~ shall be eligible for appointment or service under this section. Members of the board shall serve without pay, other than their actual expenses while carrying out the functions of the board.

2. -- term. The term of office of each member shall be 5 years, provided that of the members first appointed, 1/3 shall be appointed for terms of one year, 1/3 for terms of 2 years and 1/3 for terms of 5 years. Any vacancy created shall be filled for the remainder of the unexpired term.

3. -- powers. Notwithstanding any other provision of law, the State Board of Education shall have only the powers specifically stated in this subsection:

A. It shall act in an advisory capacity to the Commissioner of Educational and Cultural Services concerning matters contained in this Title;

B. It shall be the responsibility of the State Board of Education to exercise the following specific powers and to perform the following duties in accordance with the statutes: Make recommendations to the Legislature for the efficient conduct of the public schools of the State; approve the formation of School Administrative Districts; establish, maintain and operate state technical and vocational institutes and schools of practical nursing; act upon applications for additions to ~~and dissolution of~~ School Administrative Districts; establish requirements for approval and accreditation of elementary and secondary schools; ~~adjust subsidy to an administrative unit when the expenditures for education in such unit show evidence of manipulation to gain an unfair advantage or are adjudged excessive;~~ grant permission for administrative units to enter into agreements for cooperative educational purposes; act upon articles of agreement for an Interstate School District; develop and adopt a plan for the establishment of regional technical and vocational centers; approve standards for school construction; approve projects for school construction; approve projects for state construction aid; approve the formation of community school districts; ~~approve isolated schools~~ establish standards for approval of isolated schools; obtain information regarding applications

for granting degrees and make recommendations to the Legislature; recommend funds to the Bureau of the Budget for equalization of educational opportunity; establish a student loan insurance program; serve as state agency for administering Federal funds and serve as an appeals board for unclassified personnel;

C. It shall review on the written request of any interested party decisions made by the department acting through the commissioner or his duly authorized representative pursuant to the following sections: 222, 916, 1281, 1901, 2356-B, 3457 and 3458. The written request shall be filed within 30 days from the date of the department's decision.

D. It shall have the authority granted to it pursuant to section 3762.

Sec. 2. 20 MRSA §102, sub-§16, 2nd ¶, last sentence, as enacted by PL 1969, c. 234, §2, is repealed.

Sec. 3. 20 MRSA §305, 4th ¶, 3rd sentence, as enacted by PL 1965, c. 48, §3, is further amended to read:

If the board commissioner finds that a majority of the residents within each of the municipalities involved voting on the question of the method of sharing costs have voted in the affirmative, the board commissioner shall make a finding of fact to that effect, and record the same upon its his records, ~~and-certify-its~~

~~finding-to-the-commissioner.~~

Sec. 4. 20 MRSA §916, as amended by PL 1973, c. 571, §31,
is further amended to read:

§916. Accreditation of elementary schools.

Any approved elementary school unit may apply to the commissioner for recognition as an accredited school unit. ~~The Commissioner-of-Educational-and-Cultural-Services, with the approval of the Board of Education,~~ State Board of Education shall establish requirements for accreditation, which shall include quality of instruction, curriculum and school facilities. The commissioner shall appoint an advisory committee of professionals and lay persons to assist in the development of these standards. Notwithstanding any other provision of law, the words "State Board of Education" in this section shall mean State Board of Education.

Sec. 5. 20 MRSA §1281, sub-§3, as amended by PL 1969, c. 440, §9-A, is further amended to read:

3. Minimum school year. It has a minimum school year of 180 days, of which not less than 175 shall be actual school days and not more than 5 may be devoted to in-service education of teachers. ~~The State-Board-of-Education~~ Commissioner of Educational and Cultural Services shall have the right to reduce or waive the minimum number of days required upon

application from any school committee, board of directors or board of trustees of any academy in the State, such application to be supported in writing with a statement of the reasons for such request.

Sec. 6. 20 MRSA §1281, sub-§10, 1st ¶, as amended by PL 1971, c. 205, is further amended to read:

10. Size. Any public school enrolling fewer than 100 pupils may be approved by the State-Board-of-Education Commissioner of Educational and Cultural Services on an emergency or continuing basis only after the school committee or board of directors have presented in detail reasons for such emergency or continuing approval. Any such school which is adjudged by the board commissioner to be geographically isolated shall receive the board's commissioner's approval for a 6-year period subject to the right of the board to terminate its approval, on the ground of size, only if the school receives at least 5-years' notice of such termination, and subject also to the satisfactory meeting in every case of the other requirements of this section. The State Board of Education shall establish criteria for approval as a geographically isolated school. Notwithstanding any other provision of law, the words "State Board of Education" in this subsection shall mean State Board of Education.

Sec. 7. 20 MRSA §1901, as amended by PL 1973, c. 571, §39,
is repealed and the following enacted in place thereof:

§1901. Minimum salaries for teachers.

Substitute teachers with 4 years of study beyond the high school and with a bachelor's degree and in possession of a standard teachers' certificate and substitute teachers who have retired after a minimum of 15 years teaching shall be compensated at the rate of not less than \$20 for each day's service.

After providing an opportunity for a hearing, the Commissioner of Educational and Cultural Services may adjust the state subsidy to an administrative unit when the expenditures for education in such unit show evidence of manipulation to gain an unfair advantage or are adjudged excessive. Any interested party aggrieved by a decision of the commissioner may appeal to the State Board of Education pursuant to section 51.

Any money paid by a school administrative unit as a premium for an annuity contract for the benefit of an employee shall, for purposes of minimum salaries for teachers, be considered part of such employee's salary.

Sec. 8. 20 MRSA §2021, 2nd sentence, as enacted by PL 1969, c. 189, is amended to read:

He may enter into contracts pursuant to Article III of the Agreement ~~only with the approval of the specific text thereof by the State Board of Education.~~

Sec. 9. 20 MRSA §3455, as amended by PL 1973, c. 571, §§50, 51, is further amended by adding a new sentence at the end to read:

Notwithstanding any other provision of law, the word "department" in this section shall mean department.

Sec. 10. 20 MRSA §3713, sub-§3-C, as amended by PL 1973, c. 783, §§32 to 40, is further amended to read:

C. ~~The State Board of Education~~ Commissioner of the Department of Educational and Cultural Services shall determine geographic isolation and may declare a unit to be geographically isolated when that unit is located an unreasonably long distance from another unit or school facility, or is situated in a location which has unique problems in transporting students to another school unit. If the unit is declared to be geographically isolated, ~~by the State Board of Education, the board~~ the Commissioner shall adjust the per pupil allocation to that unit to meet the educational needs of that unit, except that such an adjustment shall not exceed the amounts expended by

that the unit which were in excess of the state average elementary and secondary expenditures of the previous year. Such a unit shall be granted the adjustment at least 2 months prior to its budget meeting, when possible, upon justification of the need for such an adjustment and only on the condition that the unit raise its share of the funds required to maintain its elementary or secondary per pupil operating cost as required by subsection 3, paragraph B. The State Board of Education shall establish criteria for approval as a geographically isolated school.

Sec. 12. Amendatory provision. Wherever in section 301, 301-A and 305 of Title 20 of the Revised Statutes the words "State Board of Education" appear, they shall mean "Commissioner of the Department of Educational and Cultural Services."

STATEMENT OF FACT

This bill implements the recommendations of the Joint Standing Committee on Education of the 106th Legislature. The Committee on Education was directed to study the existing powers of State Board and make recommendations to the 107th. A full explanation of each of the committee recommendations can be found in its Final Report to the Legislative Council.

The committee's recommendations transfer some purely administrative powers from the State Board to the commissioner and otherwise maintain the existing powers of the Board.

Appendix A

STATE OF MAINE

D. O. E. B.

In Senate March 8, 1974

Ordered,

WHEREAS, the Maine Management and Cost Survey recommended divesting the State Board of Education of responsibilities; and

WHEREAS, the State Board of Education has responsibilities related to approval of school administrative and community school districts, standards for elementary and secondary schools, standards for school construction, establishment and operation of technical and vocational institutes and other matters relating to governance of elementary and secondary education; and

WHEREAS, the survey commission further recommended the creation of an Advisory Board of Education to act in an advisory capacity to the Commissioner of Educational and Cultural Services; and

WHEREAS, Governor Kenneth M. Curtis in a special message to the 106th Legislature on January 10, 1974 reported that there are certain duties and functions relating to federal programs and state affairs which require a policy-making board rather than an advisory group and advised that before these recommendations are adopted, the duties of the State Board of Education be carefully studied and that any matters which are primarily administrative in nature be transferred to the commissioner; now, therefore, be it

ORDERED, the House concurring, that the Legislative Council be directed to conduct a study through the Joint Standing Committee on Education of the subject matter of the following bill: "AN ACT Abolishing the State Board of Education and Creating an Advisory Board," Senate Paper 863, Legislative Document 2432, introduced at the first

D. DE B.

special session of the 106th Legislature to determine whether the best interests of the State would be served by adoption of such legislation; and be it further

ORDERED, that the Council report the results of its study to the 107th Legislature.

SP 929

(Katz)
NAME:

[Handwritten signature] and

COUNTY: Kennebec

HOUSE OF REPRESENTATIVES

READ AND PASSED

MAR 27 1974

IN CONCURRENCE
[Handwritten signature]

IN SENATE CHAMBER *Lead*
Tabled by SEN. BERRY
OF CUMBERLAND

MAR 8 1974

PENDING *Passage*
HARRY N. STARBRANCH, Secretary

IN SENATE
TAKEN FROM TABLE ON MOTION
BY SEN. BERRY AND
OF CUMBERLAND

MAR 26 1974

MOTION BY *Passed*
SENT DOWN FOR CONCURRENCE
[Handwritten signature]

SECRETARY
Ordered sent forthwith

Appendix B

The first
State Board
of Education:

Twenty-six years after entering the union, a state system of education had not yet begun to form. No statistics were available since no state school officer existed to initiate such information gathering. Teachers were without associations or conventions. If some municipalities failed to obey the law or used money unwisely, the state lacked the organization to become aware of it.

At a state convention of teachers and friends of education in January 1846, however, a committee of three was appointed to identify the weaknesses of existing education and to prepare a memorial to the Legislature containing any proposals requiring statutory changes. Among its recommendations, this committee called for the creation of a State Board of Education. The report of the committee was transmitted to the Legislature and in July 1846 a State Board of Education had become part of the public laws.

The duties of this State Board were limited to data collecting and dissemination, consultation with school committees on educational methods and inquiry into subjects like the advantages of normal schools and the general improvement of teaching. Nevertheless, the creation of the board has been called "an era of reform

and advance in education". Teachers institutes were held for the first time in every county, teachers associations were formed, provisions for schools in unincorporated areas were added to the statutes, and laws relating to the formation of school districts were also enacted.

The era of the first board was as short as it was successful, however, for the Legislature abolished the board in 1852. Since the Board had unquestionably provided for significant advances in education, the action of the Legislature is puzzling. One writer, W.J. Corthell, attributes the board's short life to its composition.* The board had been composed of one member from each county chosen by the county school committee. As such, the board was insulated from political power at the state level and could not be used for patronage. The board was replaced by county commissioners of the common schools appointed by the Governor.

Creation of
the present-
day State
Board:

Until 1949 the Governor appointed the Commissioner of Education for a three year term and the Commissioner organized the department with the approval of the Governor and Council. In 1949, however, the State Board

* Twenty-third Annual Report of the State Superintendents of Common Schools; 1876; p. 39.

of Education was re-established and given the power to appoint the Commissioner.

This State Board was composed of 10 members, five appointed by the Governor and each of the other five by a different organization: (1) the Liberal Arts and Teachers Colleges Association, (2) the Maine Superintendents' Association, (3) the Maine Municipal Association, (4) the Maine Congress of Parents and Teachers and (5) the Maine Teachers Association. These members were to serve five years with the organizations choosing their successors.

The duties assigned to the newly created board included:

- (1) selection of the Commissioner
- (2) selection of personnel for the department from nominations of the Commissioner
- (3) authority to organize and reorganize the department
- (4) approval, with the Commissioner, for regroupings of towns into school unions
- (5) cooperation with the Federal Vocational Board
- (6) administration of rehabilitation programs
- (7) authority to receive gifts
- (8) cooperation with the Industrial Accident Commission
- (9) authority for state normal schools.

By 1951, the Governor was appointing the 5 members from the organizations from names supplied by the groups. Meanwhile, the powers of the board had expanded in both vocational and teacher education. The board assumed the responsibility for establishing, maintaining and operating vocational schools and replaced the Vocational Education Board. Similarly, the board superseded the Normal School Board and in doing so assumed several additional duties. By 1954, then, the State Board was already solidly established in five principal areas: (1) vocational education, (2) normal schools, (3) receiving and disbursing funds, (4) adjustment of the general subsidy and (5) the Maine School Building Authority.

Between 1954 and 1964, statutory references to the State Board increased from 20 to 62. By 1964, the board was appointed by the Governor from the general public and the creation of S.A.D.s had become a major new area of responsibility. In addition, the Legislature had assigned a number of duties in relation to summer schools, firemen's education, correspondence schools, drivers' education and practical nursing.

The expansion in powers of the board stabilized between 1964 and 1972. In 1972, however, a massive shift occurred. The Legislature transferred 41 statutory references from the State Board to the Department of Education. These changes were advanced

as simply removing administrative duties from what was intended to be a policy-making board. Although many, if not most, of these changes did affect only administrative duties, others clearly involved policy. A close look at Title 20, section 51, subsection 3 will illustrate the magnitude of the 1972 changes. The State Board is assigned 19 specific powers in this subsection. The changes of 1972 left only 8 of these powers residing with the board. Of these 8 remaining powers, 4 are seldom exercised and one other could not reasonably be changed.

In 1973, the Legislature reversed itself by shifting 28 of the 41 references back to the State Board.

Appendix C

	<u>Citation</u>	<u>No. of Members</u>	<u>Method of Appt.</u>	<u>Composition</u>	<u>Powers & Duties</u>	<u>Compensation</u>
Alabama	52:9	7	Appt. by Gov.	One from each C.D.	General control & supervision	\$10 p.d. + exp.
Alaska	14:07.075	7; not more than 4 from 1 party	Appt by Gov.	One from each J.D.	General control	Normal state p.d. + Exp.
Arizona	15:101	7	Appt. by Gov.	Univ. Pres. Jr. Col. Pres. H. Sch. Sup. 3 lay members	General Control	Expenses
Arkansas	80:103	9	Appt. by Gov.	One from each C.D.	General Control	\$25 + exp. p.d.
California	Vol. 26; Div. 2; 101	10	Appt. by Gov.		General control & supervision	Exp.
Colorado	123-1:4	5	Elected	One from each C.D.	General Control	Expenses
Connecticut	10:1	9	Appt. by Gov.		General Control	Expenses
Delaware	14:104	6	Appt. by Gov.		General Control	\$25/day + Exp. (not more than 18 meetings/yr.)
D.C.	31:101ff	11	Elected	Part at large- Part geograph.	General policy	\$1200/yr.
Florida	229:041	7		Gov., A.G., Agri. Treas., Comptrol- ler, Sec. of St.	Chief Policy making & co-ordinating body	----

	<u>Citation</u>	<u>No. of Members</u>	<u>Method of Appt.</u>	<u>Composition</u>	<u>Powers & Duties</u>	<u>Compensation</u>
Michigan	16:404	8	Elected	At large	General Control	\$70 p.d. for Chm. \$60 p.d. for members + expenses
Minnesota	121:02	9	Appt. by Gov.	One from each C.D.	General Control	\$25 p.d. + expenses
Mississippi	37:1:1	3	Stat. Off.	Sup. of P.I. A.G., Sec. of St.	Management & Control given to Supt. of P.I. subject to Bd's. direction	
Missouri	161:021	8	Appt. by Gov.	Lay members No more than 4 from same party	General Control	\$25 p.d. + expenses
Montana	75:5610	7	Appt. by Gov.	Not more than 4 from 1 party or 1 C.D.	General Control	\$25 p.d. + expenses
Nebraska	79:321	8	Elected	Non-partisan, lay, from districts	General supervision	Expenses
Nevada	385:021	7	Elected	Two appointed for Agric. & Labor by the Board	General Control	Expenses
New Hamp.	186:1	7	Appt. by Gov.		General Control	Expenses
New Jersey	18A:4-3	12	Appt. by Gov.	Not more than 3 from one cnty.	General supervision	Expenses
New Mexico	77:2-1	10	Elected	From judicial districts	General control	Std. St. p.d. +

	<u>Citation</u>	<u>No. of Members</u>	<u>Method of Appt.</u>	<u>Composition</u>	<u>Powers & Duties</u>	<u>Compensation</u>
New York	Book 16 page XVI	12	Elected	By the Legis. from J.D. No Educ. Inst. Officers		Exp.
North Car.	115:10	11	Appt. by Gov.	One from each Educ. District	General Control	P.D. & exp. as granted by Legis.
North Dak.	15:21:17		Appt. by Gov.	1 qual. resident of each J.D.	General Control	\$30 p.d. + expenses
Ohio	3301:	24	Elected	Lay represen- tatives. 24 districts	General Control	Sal. fixed by legis. + exp.
Oklahoma	70:3-101	7	Appt. by Gov.		General Control	\$25 p.d. + exp.
Oregon	326:011	7	Appt. by Gov.	One from each C.D.	General Control	compensation at std. st. + exp.
Pennsylvania	71:118	17	Appt. by Gov.		Policy	Expenses
Rhode Island	16:1-1	7	Appt. by Gov.		Policy	Expenses
South Car.	21:41	14	Elected	One from each Jud. District	General Control	p.d. + mil. same as Legis.
South Dakota	13:1:1	7	Appt. by Gov.	One from ea. Sup. Ct. Dist.	Policy	\$20 p.d. + exp.

	<u>Citation</u>	<u>No. of Members</u>	<u>Method of Appt.</u>	<u>Composition</u>	<u>Powers & Duties</u>	<u>Compensation</u>
Tennessee	49:106	12	Appt. by Gov.	4 from each division	Gen. Adm.	\$15 p.d. + expenses
Texas	VTCA 11:22	24	Elected	One from each C.D.	General policy	Expenses
Utah	53-2-1	11	Elected	Election Districts	General Control	\$600/yr. + exp.
Vermont	16:161	7 (at least 2 women)	Appt. by Gov.		General Control	Exp.
Virgin Is.	3:97 17:21	9	Elected	At la rge	General Policy	\$30 p.d. + expenses
Virginia	22:11	9	Appt. by Gov.		General Super.	\$25 p.d. + exp.
Washington	28A.04-120	7	Elected	2 from each C.D.	General Policy	Expenses
W. Virginia	18:2	9	Appt. by Gov.	No pub. emp. Not more than 5 from 1 party. Not more than 3 from 1 C.D.	General Policy	\$50 p.d. + expenses
Wisconsin	(Const.10:1)		None		St. Supt. in charge	
Wyoming	21:4	7	By St. Supt. of Pub. Instruct.	Rep. of citizens 2 in educ. work Not more than 4 from 1 party	General Control	\$10 p.d. + expenses

Summary Total	<u>Method of Selec.</u>				<u>Compensation</u>				<u>P.& D.</u>		
	<u>Elected</u>	<u>Appt.</u>	<u>Other</u>	<u>None</u>	<u>Salary</u>	<u>P.D. + Expenses</u>	<u>Exp.</u>	<u>None</u>	<u>Policy</u>	<u>Advis.</u>	<u>Other</u>
51	16	32	2	1	3	28	17	3	49		2

Appendix D

July 2, 1974

Honorable Jon A. Lund
Attorney General
State House
Augusta, Maine

Dear Mr. Lund:

The Committee on Education has recently initiated a study of L.D. 2432, AN ACT Abolishing the State Board of Education and Creating an Advisory Board.

In order to familiarize itself with the reporting relationships, methods of appointment and specific duties of the Commissioner of Educational and Cultural Services and the State Board, the committee has started a review of Title 20. Section 1-A of Title 20 describes the method of appointment and termination of the Commissioner.

The department shall consist of a Commissioner of Educational and Cultural Services appointed by the Governor after consultation with the State Board of Education and with the advice and consent of the Council to serve a term coterminous with the Governor subject to removal for cause.

The committee finds this passage unclear about the method of termination of the Commissioner. Can the Governor remove the Commissioner for cause without the consent of the Council or is the consent of the Council required?

Your assistance in clarifying this passage will be helpful to the committee as it continues its study. Thank you for your cooperation.

Sincerely,

Bennett D. Katz
BENNETT D. KATZ
Chairman, Committee on Education

BDK:d

JON A. LUND
ATTORNEY GENERAL



JOHN W. BENOIT, JR.
RICHARD S. COHEN
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04330

July 15, 1974

Senator Bennett D. Katz
27 Westwood Road
Augusta, Maine 04330

Dear Senator Katz:

Thank you for your letter of July 2, 1974, concerning the method of removal of the Commissioner of Educational and Cultural Services.

You ask: "Can the Governor remove the Commissioner for cause without the consent of the Council or is the consent of the Council required?" The answer to this question is that such removal must be with the consent of the Council.

20 M.R.S.A. § 1-A provides:

"The department shall consist of a Commissioner of Educational and Cultural Services appointed by the Governor after consultation with the State Board of Education as established and with the advice and consent of the Council to serve a term coterminous with the Governor subject to removal for cause."

Since the appointment of the Commissioner is required to be with the advice and consent of the Council, so also must his removal be with the advice and consent of the Council. See Opinion of the Justices, 72 Me. 542.

If I can be of any further aid to you in this matter, please advise me.

Yours very truly,


JON A. LUND
Attorney General

JAL:mfe