

MAINE STATE LEGISLATURE

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December 24, 1908

To Hon. Payson Smith, State Superintendent of Public Schools
Re: Removal of School Superintendent

Under recent date you submitted to me the inquiry, "Has the superintending school committee of a town the right to remove the superintendent of schools?" to which you requested my answer in writing.

Our statutes provide in terms for the election of a superintendent of schools for a town and also for the election of a superintendent of schools in towns comprising a union.

The statute is silent as to the removal of such an officer. In the absence of constitutional or legislative prohibition the power of removal is incident to the power of appointment of public officers.

Parish v. City of St. Paul, 84 Minn. 426; 87 Am. St. Rep. 374
Newsome v. Cooke, 44 Miss. 352; 7 Am. Rep. 686

If an officer is appointed for a fixed term and the power of removal is not expressly declared by law to be discretionary, he cannot be removed except for cause.

Hallgren v. Campbell, 82 Mich 255; 31 Am. St. Rep. 557.

These are rulings taken from the courts of last resort in other states and from the reasoning used by those courts I am inclined to believe that our court would adopt this principle if the question should be presented to them.

In any given case presented, you will of course carefully examine the facts to ascertain whether the superintendent was elected by the school committee of a single town, or by a joint committee from a union of towns. You will also ascertain whether the superintendent has been elected for a fixed term or otherwise. If the question of removal is then under discussion it should be presented to the body which chose the superintendent as they would have the power, if any exist, to remove. I should advise in all such cases that proper charges be made stating the causes which might call for a removal, all of which should be presented to the superintendent and ample time and a proper place should be given, at which time and place the evidence to substantiate the causes should be heard and a full opportunity of defence be given to the superintendent. If the causes are well grounded, properly proved, and not successfully answered by the superintendent, my opinion based upon the cases just cited to you is, that the superintendent might properly be removed.

Warren C. Philbrook
Assistant Attorney General