

# MAINE STATE LEGISLATURE

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STATE OF MAINE.

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REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1910.

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AUGUSTA

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could be no absolute assurance that the preferred stock would continue to pay the dividends required by law even though they were earning them. It might be argued that the statutory provision under discussion is in the present tense as to the time when the stock is offered for investment, but it seems to me that this view pushed to its extreme would render the statute idle. If stock at the brief moment when it is offered for investment is earning and paying the legal dividend that would hardly seem to meet the requirements of the statute. The intent of the law must be to provide that the stock has under ordinary circumstances not only the earning capacity but that the dividend so earned has been and will continue to be paid under ordinary circumstances. If the corporation should reserve to holders of its common stock the power to declare dividends, or other similar powers which would be imminent to the value of the preferred stock, then there would be no security or safety in such an investment. Some particular corporation might by its certificate of organization and by laws have thrown around its preferred stock all proper safeguards but your question is broad enough to refer to all corporations of the class under discussion and no safe rule could be laid down where conditions may be so variable.

The reasons suggested viz., the lack of explicit authority in the statute, the wisdom of strict construction in such a case, and the possible powers of the common stock over the preferred stock, lead me to advise that the preferred stock in the statement of facts submitted to me would not be a legal investment for savings banks in this State.

Respectfully yours,

WARREN C. PHILBROOK,

*Attorney General.*

OFFICE OF THE ATTORNEY GENERAL.

Waterville, Me., Sept. 10, 1909.

*Hon. Payson Smith, Augusta, Maine.*

SIR:—You have called my attention to a certain situation relating to a free high school in the town of S and have submitted to me what purport to be copies from the records of

the annual meetings of that town from 1900 to 1909 inclusive. The vote of 1909 is as follows :

“To raise the sum of Seven Hundred Fifty Dollars for support of Free High School subject to the following amendments: That the money appropriated shall be available when a suitable building properly equipped with furniture and out buildings, shall have been furnished without costs to the Town and in the event that such building is not furnished then no High School shall be maintained.”

Your inquiry is if a town has established a free high school and has continued its support for a term of years may it, by passing an amendment as indicated in the vote just quoted, condition its appropriation and support upon a provision such as is named in the amendment.

You do not submit to me a copy of any vote whereby the town of S in terms has voted to establish and maintain a free high school but that town having voted an appropriation through a series of years, I do not deem it a violent presumption to say that the town to all intents and purposes and by legal implication and possibly by legal vote, established a free high school. Undoubtedly a town which has established a free high school may by a proper vote discontinue and cease to maintain such a free high school. In the absence of any statute restricting the voting power of the town on the subject a town may doubtless impose certain conditions or restrictions upon the method of maintenance and conduct of such a school when the same are consistent with law. Your precise point however, relates to a condition which shall be contingent upon having a building furnished without cost to the town and that if any such building is not furnished then the free high school shall not be maintained. I do not think it within the power of the town to impose this condition. R. S. Chap. 15, Sec. 58 referring to free high school says “the town or precinct, in which said school is thus held, shall supply appropriate equipments, and *furnish and warm a suitable building for the same.*” Thus you will see that as long as the vote of the town to establish and maintain a free high school has not been revoked, the town is under an obligation to furnish and warm a suitable building for the same. Hence the conclusion to which I arrive that the conditions imposed upon the vote of

Mar. 1, 1909, and which I have above quoted in full, are not conditions which the town would have an authority to impose and insist upon. The town has a right to vote to discontinue the free high school. Until that vote is passed I think the statute plainly imposes the duty of furnishing a building in which the school may be held.

Respectfully yours,

WARREN C. PHILBROOK,  
*Attorney General.*

OFFICE OF THE ATTORNEY GENERAL.  
Waterville, Me., March 30, 1909.

*Subject:* State aid to plantations—Plantations required to pay state and county taxes to receive state aid under provisions relating to towns—Plantations not required to pay state and county taxes to receive state aid under provisions relating to unincorporated places.

*Hon. Paul D. Sargent, Augusta, Maine.*

SIR:—Your request for advice upon the question of authority of county commissioners to assess taxes for the purpose of expenditure on ways under the State road law, so-called, approved March 26, 1907, has received consideration. With the hope of making the situation more clear I have first considered

#### I. WAYS IN UNINCORPORATED PLACES.

County commissioners, upon the petition of responsible persons, under the provisions of R. S. C. 23, Sec. 43 and C. 9, Sec. 56, may lay out, alter, or discontinue a highway on any tract of land in their county not within any town or plantation required to raise money to make and repair highways. The attendant expense is to be borne by the owners of the land over which the highways pass, excepting in case of lands reserved for public uses, and by adjoining townships benefited thereby, such expense to be apportioned according to the judgment of the commissioners. The assessment of expense is to be made by the commissioners who may, in certain instances, require the county to pay a portion of the expense. The com-