

# 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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tion to sell." In that particular statute there was a requirement that the person who was licensed to sell should furnish a certain description of himself.

Again, in 88, N. E. 945, we find the following: "A license is a privilege granted to a person or persons and not to inanimate things to pursue some occupation, or to exercise some right, which has been declared unlawful except upon compliance with certain conditions."

In *State v. Morrison* found in 36, S. E. 329, is the discussion of a case where a corporation was granted a license to sell pianos and organs. The corporation sent out several agents each of whom traveled and sold under that one license. A prosecution having been instituted against one of the agents for selling without a license an attempt was made to justify through a license which was held by the corporation. The court declared that the license "authorizes only the person having it in possession to sell under it." Obviously, if there were but one license and that held by the corporation each and all of the various agents could not have it in possession. In the same case the court went further and said, "such has always been the policy of the law, except when the statute authorized the issuance of certified duplicates or copies of the license." It is needless to say that our statute does not authorize such issuance.

Without extending this discussion to a wearisome length I think I have sufficiently indicated the reasons which lead me to the answers which I have given above.

Respectfully yours,

WARREN C. PHILBROOK,

*Attorney General.*

OFFICE OF THE ATTORNEY GENERAL.

AUGUSTA, MAINE, May 17, 1910.

*Subject:* Powers of Public Boards of Health in connection with School Property.

*Dr. A. G. Young, Augusta, Maine.*

SIR:—By your letter of May 12, you ask whether the local board of health has authority to destroy school books believed by them to have been exposed to infection.

School books within any school house in Maine may be the property of the town where located, or may be owned by the parents of the children who occupy the school house.

I assume that your inquiry relates in the main to books which are the property of the town, for, as to others, the provisions of R. S. Chap. 18, Sec. 41, which prevent exposing any article that has been used by persons affected with certain diseases would seem to prevent a child from bringing to school and exposing any books or other property which had possibly been affected by the presence of a contagious disease. With regard to books owned by the town, it is well to have clearly in mind the fact that, "the custody and care . . . of all school property in every town, shall devolve upon the superintending school committee," as expressed in section 34, chapter 15, R. S.

No authority is given to anyone outside of the superintending school committee to select, purchase, care for, or dispose of school text books, the property of a city or town.

Sections 43 and 44 of said chapter 18, group closely teachers, school officers and local boards of health in specifying the duties of those first made aware of the existence of the diseases called contagious in school communities, and in directing their action when infection of the school room is discovered. Each is to act promptly; the teacher to dismiss the school and notify both committee and board of health; and no school can again be held in such infected school room until it (and, we may safely add, its contents), has been disinfected to the satisfaction of the local board of health. Either may disinfect, but the local board of health must do so, as soon as possible, if the committee fails to properly disinfect.

Article 42, of which you specifically inquire, particularly applies to matters and things discussed in the preceding sections, but I have no hesitation in saying that the local board of health may "direct the destruction" of school books, in the sense of recommending such destruction.

I do not believe, however, that the local board of health has authority to destroy school books and the furniture and fittings of a school house. If the local board of health is of the opinion that disinfection of such books, furniture and fittings is impossible or impracticable without destroying them, it may recommend to the school committee or to the owners of the books,

their destruction, and it may prevent the holding of school in the infected room until the room and its contents have been properly disinfected.

It seems inconceivable that any collision or clash of authority could arise between these two boards, but in case of such collision, I feel that the statement as above of their respective powers and duties should guide either body in an honest endeavor to do its whole duty.

You ask further, "what effect chapter 73, Public Laws of 1909, has upon the powers and duties of local boards of health under sections 43 and 44, chapter 18, R. S.," and my reply is that said chapter 73 neither diminishes nor enlarges the powers and duties of the local boards of health.

Respectfully yours,

CHARLES P. BARNES,  
*Assistant Attorney General.*

OFFICE OF THE ATTORNEY GENERAL.

WATERVILLE, MAINE, June 7, 1909.

*Subject:* Protection of trees and shrubs from the introduction and ravages of dangerous insects and diseases. Certificate on nursery stock shipped into this state from any other state, country or province. Agent's license—R. S. Chap. 15 as amended by P. L. 1909, Chap. 34.

*Mr. E. F. Hitchings, Augusta, Maine.*

SIR:—You invited my opinion upon two points relative to the purchase and shipment of nursey stock under the provisions of P. L. 1909, Chap. 34.

The first inquiry relates to R. S., Chap. 15, Sec. 4, as amended by said P. L. 1909, Chap. 34. The amended section reads as follows:

"All nursery stock shipped into this state from any other state, country or province shall bear on each box or package a certificate that the contents of said box or package have been investigated by a duly authorized inspecting officer, and that said contents appear to be free from all dangerous insects and diseases."