

MAINE STATE LEGISLATURE

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January 8, 1914

To Hon. Payson Smith, State Superintendent of Schools
Re: Directors of Districts

In relation to the inquiries of Dr. Jewett of Springfield, I am writing to you for the reason that advising town officials is outside the duties of this department and it has been found necessary to establish the rule of referring them to their own counsel. Of course, questions coming to any state department and referred to us, we consider within our duties. . . .

Dr. Jewett inquires whether under Chapter 215 of the Private and Special Laws of 1887, the directors of District Number 3 in Springfield are required to fulfil their duties just as the law reads. That question should answer itself. At least, I do not see how I can give any more intelligible reply than to say that all officials must comply with the law defining their duties.

Second, he inquires whether or not, if they fail to comply in any one instance, it has any effect upon their future duties, or their right to assume duties again. The substance of the question is whether a failure to comply with the statutes defining their duties ipso facto removes them from office.

That is not true. A mere failure to fulfil one duty has no effect upon their powers to act as directors. It is rather difficult to answer such broad, general questions so that he can apply them to any specific question that he has in mind. Of course, the directors can exercise no authority not conferred upon them by the statute and must comply with its directions. Conditions might arise where, if they refused to comply with any express directions of the statute, the court by mandamus would compel them to act in accordance with its provisions; but the fact that they have failed to do so, or have performed some act not warranted by the statute, has no effect whatsoever upon their future acts that are within the scope of their authority.

Now in relation to the act incorporating the Trustees of the Springfield Normal School, which is Chapter 281 of the Laws of 1901, I do not find that any certificate has ever been filed in accordance with the provisions of Section 3 of Chapter 47 of the Revised Statutes, and apparently under that section it is doubtful if they are lawfully incorporated. However, the court might uphold any acts which they have performed in pursuance of that statute, upon the theory that they were acting as a corporation, but I should advise that they comply with Section 3 before doing any more business. Their seal and by-laws are, of course, matters which they procure and adopt for themselves. Under the statutes the original trustees fill all vacancies occurring in their number.

Scott Wilson
Attorney General