

# 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, 1914.

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## SCHOOLS.—AUTHORITY OF COMMITTEE APPOINTED BY TOWN TO ESTABLISH SCHOOL.

13th February, 1914.

*Hon. Payson Smith, Superintendent of Schools, Augusta, Maine.*

DEAR SIR: With reference to the conditions in the town of Durham relating to the maintenance of a school in the so-called Shiloh Colony, and the disbursing of the town money for that purpose, as I understand it, the situation is substantially as follows:

At a meeting of the town held in 1907, and pursuant to an article in the warrant, it was voted to instruct the school committee to make such arrangements with the "Kingdom" for their school for the ensuing year, (or such time as shall be necessary), as the school committee shall think best for the town. A similar vote has been passed each succeeding year.

Under this vote, as I understand it, the school committee has, by agreement, apparently with someone in authority at the "Kingdom," voted to pay certain teachers who are evidently members of the Colony, for instructing the children located there. It appears now that some parents have left the "Kingdom," but are residing within the limits of the town, and still desire to send their children there. Those in authority at Shiloh, however, refuse to receive them. The question now arises as to whether a public school is being conducted within the so-called Shiloh Colony for which the school committee is authorized to expend any of the town funds, or whether the money now being paid under the present arrangement to the teachers in the so-called Shiloh school is being illegally disbursed. If it is being legally disbursed and a public school exists, no one but the school committee would have the right to exclude a child from the school.

In the first place, I do not suppose it will be contended that the school committee has any authority to disburse any of the public money for the purpose of maintaining or assisting in maintaining, a private school, notwithstanding children are attending it for whom the town might otherwise be obliged to provide. The public money can only be expended for the main-

tenance of public schools to be conducted under the supervision of the superintending school committee and the superintendent of schools. It is clear, I think, that unless the school maintained at Shiloh is a public school, the superintending school committee, or the superintendent of schools, has no right to expend any of the money of the town in employing teachers there.

The question has been raised, as I understand it, as to whether or not the superintending school committee has established under the vote of the town, a public school in the "Kingdom," as it is called, and, therefore, has a right to expend the town's money in employing teachers there. I do not understand that the town has ever voted in town meeting to establish a school there, and the committee's power in this respect is confined to such as was conferred upon it by the votes of the town previously referred to.

Section 2 of Chapter 15, R. S., relating to Education provides : that the "location of any school legally established prior to March 17, 1893, shall continue unchanged, notwithstanding the district is abolished, but any town at its annual meeting, or a meeting called for that purpose, may determine the number and location of its schools, and may discontinue them or change their location; but such discontinuance or change of location shall be made only on the written recommendation of the superintending school committee, and on conditions proper to preserve the just rights and privileges of the inhabitants for whose benefit such schools were established."

This section confers upon the town the power to establish a school at any point in the town; also the right to discontinue any school or change its location. The town of Durham has not, as the town records show, by any vote at an annual meeting, or at a meeting called for that purpose, either established a new school within the limits of the "Kingdom," or changed the location of any other school to that place. Could it delegate its power in this respect to its superintending school committee?

The authorities are in accord that a town cannot delegate any power which required the exercise of discretion. It seems to me that the language of this section clearly indicates that the legislature intended that the inhabitants of the town should

express their final judgment in open town meeting as to the number of schools they would have in the town and upon the discontinuance or change of the location of any school. I am the more strongly impressed with the correctness of this conclusion, since a discontinuance or change of location can only be made after a written recommendation by the school committee, and on "conditions proper to preserve the just rights and privileges of the inhabitants for whose benefit such schools were established," all of which imply, in my opinion, that it was intended that the inhabitants should, after discussion and deliberation only, take such action in open town meeting where all interested might be heard.

I am of the opinion, therefore, that the votes of the town at its annual meeting authorizing its school committee to make any arrangements it saw fit with the "Kingdom" for their schools, conferred no authority upon the committee to employ teachers at public expense in private schools, or in any place except a public school located under Section 2 of Chapter 15 of the Revised Statutes; nor did it authorize the school committee to establish new schools or change the location of any school within the town, and any action of the school committee, under such votes, in establishing a school, or aiding in the maintenance of one within the limits of Shiloh Colony and not legally established by the town, were *ultra vires* and illegal.

The results obtained by the committee may have been a wise solution of a difficult problem, but it seems to me that substantially the same results could be accomplished by legal methods as have been obtained by the method now in vogue.

Very sincerely,

SCOTT WILSON,

*Attorney General.*