

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

January 24, 1931

To Bertram E. Packard, Commissioner of Education

Re: School Residence

You inquired as to the placing in a secondary school of an orphan child who has a legal guardian living in Town A, but who is living with a family in Town B, in order to earn his way. Town A. has a high school, Town B. has not, and the boy is attending school in Town C.

It seems to me that the boy is entitled to schooling in a secondary school under the same conditions as other children living in Town B., in that, in Town B., he is in the custody of a person who stands "in loco parentis".

The similar statute, now R. S., Chapter 19, Section 32, was interpreted in Shaw v. Small, 124 Maine 36, to authorize the attendance at a public school in Yarmouth of a ward of the State Board placed in charge of a family in Yarmouth. The Court held that the words "parent or guardian" should be given a broad interpretation so as to secure schooling for a child in the place where he is legitimately living. The Court disregards technicalities and declines to limit the word "guardian" in meaning. It seems to me that this boy, legitimately living in Town B. is entitled to secondary schooling in the same way as if he lived with his parents in that town.

You also ask whether Town C. can charge tuition of Town B. This is a question between those two towns and not primarily the concern of your department. I should say it could.

You also inquire as to the interpretation of R. S. Chapter 19, Section 30, with reference to the schooling of children, whose parents have a permanent residence, but who are sojourning with the children in another town for a temporary purpose.

Here, also, the question of whether the second town may charge tuition of the parents of the pupils is not primarily a problem for your department. It seems clear that the children are entitled to go to school in the second town, and refusal of that town to permit them to do so would subject that town to a mandamus proceeding, as was brought in the case above cited, and might well authorize you to withhold State stipend from this town.

The only State fund definitely available in connection with such cases is the fund provided in R. S. Chapter 19, Section 31, where such children must be transported more than two miles to school, the State bears the expense of transportation, or board in lieu thereof.

You also inquire whether it is legal to transport children at public expense to a primary school supported wholly as a private institution. My answer is, No. I find no statute expressly or impliedly authorizing such expenditure.

Clement F. Robinson
Attorney General