

MAINE STATE LEGISLATURE

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January 30, 1931

To A. D. Gray, Superintendent of Schools, Eastport
Re: Liability of Teachers and School Physicians

I have your inquiry regarding school physicians, It is outside the province of this department to give an official opinion, but I am glad to give you what help I can informally.

The duties of school physicians and of school committees with reference to the health of pupils are defined in the Revised Statutes. . . It is a general principle of law that a practicing physician may legally refuse to accept a patient. See 21 Ruling Case Law, Physicians and Surgeons, Page 378. The legal duty of any individual, physician or otherwise, varies frequently from his moral obligation as a citizen or as a member of a profession. A teacher while he has custody of a child during school hours has toward that child somewhat of the position of a parent and, accordingly, has somewhat more than a moral duty to see that the child gets first aid in case of an accident.

Public officers, like other individuals, are personally responsible for their personal negligence or wrong-doing, but the State or town is not liable for the negligence or wrong-doing of an official in carrying out a government function and he is rarely liable personally for a mere error of judgment in performing his official functions.

I think these general considerations will enable you to work out the answers to the problems which you suggest.

1. I can hardly conceive of a case where the school authorities would be liable personally for an injury sustained by a pupil on the school premises and certainly the town would not be.

2. If first aid becomes necessary in the case of a child during school hours, the teacher should use his best judgment to get the first aid to the child. If practicable to get in touch with the parents or send the child home or to some physician whom the parents may choose, that would be the thing to do. But in case of an emergency the teacher could properly call in the school physician or any other available physician for the purpose of getting this first aid.

3. Any physician, school physician or otherwise, can legally refuse to treat any case sent to him. As a school physician his duties are limited to those prescribed in the statute. When an emergency comes to him he is in the same position as any other physician and has no added authority by reason of the fact that he is a school physician,

4. The school physician, therefore, is not legally obligated to continue treatments and without the parents' consent would hardly have the legal right to do so.

There is so little likelihood that the school authorities could be personally held liable for the injury that the reason which you suggest for sending the child to a school physician hardly exists. I should say, however, that the school board might properly require a physician's certificate from some physician before accepting a pupil in school who has been out for sickness. I note that there is such a rule in Portland, but the certificate of the personal physician is fully acceptable.

It seems to me that the school committee and the superintendent of schools have no concern whatever with the controversy between the parents and the two physicians as to the person responsible for an alleged malpractice. The teacher's duty was to exercise his best judgment in getting first aid to the child. Thereafter his concern and the concern of the school authorities with the case were at an end.

Clement F. Robinson
Attorney General