

# MAINE STATE LEGISLATURE

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STATE OF MAINE

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REPORT

OF THE

ATTORNEY GENERAL

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for the calendar years

1941--1942

May 13, 1941

From:  
Frank I. Cowan, Attorney General

To:  
Henry P. Weaver, Chief  
Maine State Police

I have your letter of May 2nd in regard to Chapter 211 of the Public Laws of 1937, stating that some of the Judges hold that in order to convict a person of reckless driving, under subdivision (a) it is necessary that some injury be caused.

Webster's Dictionary gives the following definition of the word "reckless":

"1. That does not reck of one's duty, character, life, or the like; now usually, careless; neglectful; indifferent; inconsiderate; . . .

"2. Characterized by or manifesting lack of due caution; rash, utterly heedless; . . .

"Syn.—Heedless, careless, thoughtless, regardless."

It seems to me that when the Legislature used the word "recklessly" in subdivision (a), it used it in its ordinary meaning as evidenced by the above definition, and that subdivisions (a) and (b) were set up to establish two distinct categories. Under subdivision (a), a person should be convicted of driving recklessly if his driving has been of a sort to come within Webster's definition, even though no damage has been caused. Subdivision (b) may have been inserted to cover cases that might arise where the evidence would be a little bit weak on the reckless driving, but where the lax conduct of the respondent has been combined with an actual damage to property.

I can't see any justification in the wording of the Act for a holding that actual damage is necessary before a respondent can be held guilty of reckless driving.

F. I. C.

May 16, 1941

From:  
Frank I. Cowan, Attorney General

To:  
Bertram E. Packard, Commissioner of Education

I have your letter of April 25th in regard to exclusion of children from school by local school boards.

R. S., Chapter 19, Section 32. "Every child between the said ages (of 5 and 21 years) shall have the right to attend the public schools in the town in which his parent or guardian has a legal residence, *subject to such reasonable regulations as to the numbers and qualifications of pupils to be admitted to the respective schools and as to other school matters as the superintending school committee shall from time to time prescribe.*"

R. S., Chapter 19, Section 17. "Every child between the 7th and 15th anniversaries of his birth . . . shall attend some public day school during the time such school is in session . . . provided, also, that such attendance shall not be required if the child obtains equivalent instruction . . . in a private school . . . or in any other manner arranged for by the superintending school committee with the approval of the State Commissioner of Education . . . and provided, further, that the . . . committee may exclude from the public schools any child whose physical or mental condition makes it inexpedient for him to attend."

R. S., Chapter 19, Section 44. "Superintending School Committees shall perform the following duties:

Par. IV. "Expel any obstinately disobedient and disorderly scholar, after a proper investigation of his behavior if found necessary for the peace and usefulness of the school; and restore him on satisfactory evidence of his repentance and amendment."

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Donahue vs. Richards, 38 Me. at page 397:

"The committee may enforce obedience to all regulations within the scope of their authority. If they may select a book they may require the use of the book selected. If the plaintiff may refuse reading in one book, she may in another, unless for some cause she is exempted from the duty of obedience. If she may decline to obey one requirement, rightfully made, then she may another, and the discipline of the school is at an end. It is for the committee to determine what misconduct requires expulsion."

It would seem from the above that the school committee has authority to set up such regulations as, in the exercise of their proper discretion, seems best. If the regulation seems to be a wrongful exercise of discretion, the courts would doubtless overrule the board. One of the arguments raised in the case of *Donahue v Richards*, *Supra*, was that the committee might require the reading of certain atheistic and lascivious books. The court in the dictum suggested that even such conduct on the part of the school committee would not be subject to review by the courts but would be a matter for the citizens to correct at the next election.

It seems to me doubtful that the courts would support this dictum, but I believe they would go a long way in upholding the action of a school committee.

FRANK I. COWAN

Attorney General