

MAINE STATE LEGISLATURE

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November 27, 1941

To Harry V. Gilson, Commissioner of Education
Re: Responsibility for Payment of Tuition

I am pleased to call your attention to Chapter 19 of the Revised Statutes, Section 93, which reads in part,

"Any youth who resides with a parent or guardian in any town which does not support and maintain a standard secondary school may attend any approved secondary school to which he may gain entrance by permission of those having charge there, . . ."

The meaning of the word "guardian" in this statute seems to be the controlling factor. In the case of Shaw v. Small, 124 Maine 38, the Court said:

"If the word 'guardian' must, as is contended, be strictly construed to mean a guardian appointed as such by a Court, the respondents would prevail. But the word is not to be thus interpreted."

"Every dictionary defines 'guardian' either precisely or in substance thus: 'A person who legally has the care of the person or property or both of another incompetent to act for himself. . . . The Nebraska statute is in all essentials like that of Maine. The domicile of the parent or guardian determines the town or district wherein the pupil has a legal right to free school privileges. A child having no legally appointed guardian, by consent of its father, lived with a relative of its deceased mother in a town distant from the father's home. The school board refused the child school privileges save upon payment of tuition. By peremptory writ of mandamus the Supreme Court of Nebraska ordered that the child be accorded school privileges without payment. McNish v. State (Neb.) 104 N.W. 183. This case is directly in point."

This department has ruled in the past that residence of a child with a relative only during the time he or she is attending school does not meet the requirement of the statute so as to make the town in which the relative lives liable for tuition.

Sanford L. Fogg
Deputy Attorney General