

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

March 18, 1943

To:
Carl T. Russell, Deputy Commissioner Labor

From:
Frank A. Farrington, Deputy Attorney General

Weekly Payment of Wage Law

In your letter of March 17 you ask whether an oil company comes under the provisions of Section 39 of Chapter 54 of the Revised Statutes of 1930.

It is the opinion of this department that such a company does come under the provisions of said Section 39.

FRANK A. FARRINGTON
Deputy Attorney General

March 19, 1943

From:
The Attorney General

To:
The State Tax Assessor

In re School Building at Baring

Under the statutes when a town is disorganized, all school property becomes the property of the State. The use of the word "disorganized" in this statute (R. S. c. 19, §144) is appropriate to fit P. & S. L. 1941 c. 4, which is an emergency act entitled "AN ACT to Provide for the Surrender by the Town of Baring of Its Organization". The school house at Baring, therefore, became the property of the State immediately on the taking effect of the emergency act. The State school department informs me that this building is now being used as a public school although I note in your memorandum that there is a proposition for taking the pupils to Calais to save expense.

I am further informed, but that is an administrative question and I simply cite it because it has been mentioned to me, that due to the economic trend in Baring it is highly questionable whether there is any present recoverable cash value in this building.

The note for \$1870.36 held by the Calais Federal Savings and Loan Association is one of the debts of the municipality. While it is true that the State of Maine recognizes the common law rule in regard to mortgages, we must not overlook the fact that the mortgage, no matter where the actual legal title to the real estate may be, is simply security for a debt. The debt is the primary object and the mortgage is the secondary object. In this case the primary object is a

debt of \$1870.36 which was owed by the town of Baring at the date the special act above referred to took effect, and the question is shall that debt be paid, or shall certain property of the municipality which by reason of a special statute has been transferred to the State of Maine be delivered over to the creditor as payment on account of a debt. Sight must not be lost of the fact that there is no necessity in law that the creditor accept this particular property as payment of even part of its debt. It is a security that he holds but acceptance of the security by him, either by foreclosure proceedings or by voluntary transfer, does not cancel the debt unless the creditor agrees that it shall or the Court decrees that it shall. If in this particular case there is no present recoverable value for the building it may very well be that the Savings and Loan Association will decline to take the burden of this property in cancellation of the debt. That again is an administrative question and I mention it merely to remind you of the fact.

Sight should not be lost of the meaning of R. S. c. 19, § 144. As far as I know there have been no Court decisions interpreting this statute but this office has in the past rendered an opinion to the effect that the public property of these disorganized, or deorganized, towns or plantations is held by the State solely for the benefit of the people of the community, and if they later reorganize, the property should be turned back to them so that they can carry on their normal functions as an operating unit of the State. It seems reasonable to me to believe that Chapter 19, § 144 should be interpreted in the same manner and that the State, having assumed the burden of handling the affairs of Baring during a time of stress, is under the moral obligation of restoring to the people of the community all public property whether school buildings or otherwise when the community is again able to assume normal functions as such. In other words, the act of the State in taking over the property of the community is a protective act for the benefit of one member of the State and does not contemplate the liquidation of the community.

Following this line of reasoning, it seems to me that the law requires that the State shall dispose of the obligations of the community under the powers given to the several departmental heads by the special statutes enacted for that purpose. In as much as education is recognized as one of the necessary primary functions of any community, the sale of a schoolhouse by the State when the community is in distress should be decided upon only after the most careful consideration of the present and possible future needs of that community. On the question as to whether or not the burden is on the department of education to pay off any of the town debts, in the absence of any express statute so providing, I shall have to give a negative answer. I know of no statute that says the department of education shall pay off any general indebtedness of any community whether that community is solvent or insolvent.

P. L. 1941, c. 137, expressly provides that: "If no road maintenance as above described exists in said town, said unexpended funds

shall be expended on repairs, maintenance or restoration of such town enterprise as may be designated by the state tax assessor in his capacity as hereinbefore or hereinafter described in this act." I particularly refrain from any attempt at this time to define the exact powers and duties of the state tax assessor under this statute, preferring to wait until a specific case has arisen at which time we can apply the knowledge which experience has given us in determining just what those limits should be.

FRANK I. COWAN
Attorney General

March 24, 1943

Harold E. Kimball, Secretary
Port of Portland Authority
Portland, Maine

Dear Sir:

Your letter of March 22nd, has been referred to the writer for reply.

The Port of Portland Authority was created by Chapter 114, P. & S. L. 1929. By Section 1(b) of said act the Port Authority "is constituted a public agency of the State of Maine".

Section 227 A (3) of Chapter 328, P. L. 1941 reads as follows: " 'Department' shall mean any department, commission, institution or agency of the state government."

It is the opinion of this department that the provisions of said chapter 328, P. L. 1941 are applicable to employees of the Port of Portland Authority.

Very truly yours,

FRANK A. FARRINGTON
Deputy Attorney General

March 24, 1943

To:

Earl R. Hayes, Secretary

Employees Retirement System

From:

Frank A. Farrington, Deputy

Attorney General

Back Contributions under Retirement System

Reference is to your memorandum of March 23, 1943.

Chapter 328, P. L. 1941, makes no provision for acceptance of back contributions from persons who elect to become members of the system after the date of establishment of the system, having previously elected not to become a member.