

# 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

1943--1944

August 19, 1943

Harry V. Gilson, Commissioner

I have examined the records of meetings of the superintending school committee for the City of Belfast for the years 1942 and 1943 and also the records of the meetings of the joint superintending school committee for the Belfast-Searsport School Union for the same period. I find that under date of May 18, 1942, a meeting of the joint board was held at which meeting there were present a majority of the members of the Belfast board and the three members of the Searsport board. At that meeting, according to the records (and no question has been raised as to the accuracy of the records) it was unanimously voted to elect Horatio S. Read as superintendent of the joint boards for a period of two years, from June, 1942, to June, 1944.

The statute provides that "The election of a superintendent of schools as herein provided shall not be effective unless said election shall be approved by the superintending school committee of the town in said union having a majority of the teachers in the towns comprising the union, etc." The statute does not require, nor does it suggest that the "approval" shall be by a vote of the committee of the town taken at a separate time or place or separately recorded. The only provision is that there shall be "approval" by the committee of the town, and in my opinion we are justified in assuming that when a majority of the committee of the City of Belfast was present and all those present "by unanimous vote" cast their ballots for Mr. Read, the purposes of the statute were accomplished, inasmuch as there is no question but what Belfast has a majority of the teachers and pays not less than one-half of the salary "exclusive of any sums paid by the state for the purpose."

We then come to the question as to whether or not Mr. Read was properly discharged.

The statute provides as follows: "Provided, however, that said committee by a majority vote of its full membership after due notice and investigation may for cause discharge a superintendent of schools before the expiration of the term for which he was elected, and after such discharge the salary of said superintendent shall cease."

Inasmuch as Mr. Read took office under the provisions of this statute we need not consider the question of breach of contract by the town. He was bound by all the provisions of the statute under which he took office.

The statute further provides: "The superintending school committee of any town may authorize one of its members to act for the committee in the meetings of the joint committee, and in such case the member so authorized may cast the votes for the full membership of his committee." This provision comes in the first sentence of Section 64 of R. S. Chapter 19, whereas the provision in regard to discharge occurs in the latter part of that same section. It is my opinion that the sentence beginning "Provided, however" and having to do with discharge is a limitation on the provisions of the first sentence of the section

authorizing one member to act for the whole committee, and that in proceedings to discharge a superintendent the vote of the City of Belfast cannot be cast by one member who has been designated for that purpose by a simple majority vote of his school committee. If the "votes" can be cast by one member so selected, then it is my opinion that he must record the "votes" of each member of the superintending school committee which he is representing, so that in this particular instance, where the record shows that there were recorded against Mr. Read 11 votes from Belfast, the record should have been 7 votes from Belfast against him and 4 votes for him. On this interpretation he would have received 4 votes from Belfast and 3 from Searsport in his favor, a total of 7 votes, and 7 votes would have been cast by members of the Belfast board against him, so that a tie would have resulted. Inasmuch as the statute expressly provides that a discharge must be "by a majority vote of its full membership," it is necessary to hold that Mr. Read has not been discharged as superintendent of schools of the Belfast-Searsport School Union and is still authorized to carry on the functions of his office.

Very truly yours,

FRANK I. COWAN

Attorney-General

N. E. The City of Belfast refused to accept the above opinion and took the matter to Court. The Court upheld the position of the Attorney-General.

August 24, 1943

J. A. Mossman, Commissioner

Finance

I have your memo of August 9th asking the following question:

"Would it in your opinion be proper for the Governor and Council to advance general funds of the State to the Maine State Office Building Authority to cover such preliminary expenses as are necessary?"

The statute (P. & S. 1941, Chapter 76) provides for a building which will in the course of time pay for itself. Inasmuch as there is no money available for the preliminary expenses, it will be proper to make advances from the general funds of the State and repay the general funds from the income of the building. This, it seems to me, is a different situation from that which arises when there is an authorization of general expenditure with no provision of funds for payment. Under the latter circumstances, since there is no provision for amortization of moneys spent, it is necessary to go to the contingent fund.

I think there is no difference in procedure between the State House Building Authority Act and the Turnpike Authority Act. The Turnpike Authority Act simply authorizes that which would be a necessary procedure in any case.

FRANK I. COWAN

Attorney-General