

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

September 1, 1943

Alfred Perkins, Commissioner

Insurance

I have your memo of August 30th in regard to Mutual Casualty insurance on State of Maine risks.

It is my understanding that in years past this office has avoided giving a formal opinion on this subject. If the mutual casualty company to which you refer is a State of Maine company, which will necessarily be under the direct attention of the Insurance Commissioner, I see no reason at all why the State of Maine cannot insure with it. The courts of Maine have never passed on the only question that has really bothered people in the past, which is that of possible membership in a mutual organization and liability for losses on the part of the company. However, the courts of New York have stated affirmatively that that State can buy mutual insurance, and it is my understanding that courts in some other States have come to the same conclusion. I see no reason why we cannot safely follow their example.

FRANK I. COWAN

Attorney-General

September 1, 1943

David H. Stevens, State Assessor

Taxation

This office has a memo from Mr. Lewis of your office dated July 1, 1943, and another dated September 1, 1943, in regard to T1R1NBKP Rockwood Strip, Somerset County, together with exhibits. I am returning the exhibits herewith.

I believe that the matter referred to is one that must be corrected by the legislature. There is no authority in the Tax Assessor nor in the Governor and Council, to straighten out titles.

FRANK I. COWAN

Attorney-General

September 1, 1943

Harry V. Gilson, Commissioner

Education

Your memorandum of December 15, 1942, in regard to use of public school buildings in Auburn for holding classes in religious education has, as you know, been discussed by us on several occasions. We have tried to work out a rule that shall follow the principle of division of Church and State and still will not conflict with the proper desire of people of a community to hold religious exercises in locations that may in some cases be the only ones available for public gatherings. We have found it necessary to consider the propriety of people in country districts holding religious services on Sunday in country school houses, where no church is located within several miles or where, if there is a church, it is not available for use by this particular group. We have also been compelled to consider cases such as that which has arisen in Brunswick, where a parochial school has burned and the religious sect which operated that particular school informs us it has not been able to obtain priorities to erect a school building during the summer.

Our survey of the whole situation throughout the State seems to lead us inevitably to the conclusion that if any religious group wishes to hold religious services, it is perfectly free to make use of any privately owned buildings or halls, the owners of which are willing to have them meet there, or to erect places of worship or schools for religious instruction. That right is definitely protected by both the Federal and the State Constitutions. However, public school buildings are provided from funds derived from taxation of all the people. The question of sectarianism and the question of religious affiliation cannot be raised in connection with the taxation of any one of our citizens. Whether a man is Christian, Mohammedan or Jew, and what particular dogma he follows in his worship are wholly immaterial. He is taxed and his money is used for the erection of school buildings. Those buildings are dedicated to purposes of secular education as distinguished from religious education. Knowing as we do that controversies over religious dogmas have been one of the great sources of trouble in this world, and recognizing the fact as we do that we ourselves as a people have not yet advanced to that point where we can treat with complete toleration the religious views of our neighbors, it seems to me that we are compelled by our knowledge of the facts to maintain a strict construction of the law. In my opinion, a school board in any municipality of this State cannot lawfully permit the use of a public school building by any group for any particular type of religious training. Such, I believe, was the intention of the framers of the State Constitution, and such, I believe, has been the intention of our legislature in all the enactments that it has made since the foundation of our government.

FRANK I. COWAN

Attorney-General

September 1, 1943

Carl W. Maxfield, D.M.D., Secretary
Board of Dental Examiners,
31 Central Street,
Bangor, Maine.

Dear Doctor,

I have just written to Dr. to find out if he has anything further in connection with the newspaper ad for a dentist. I asked him specifically, if he has one of the letters enclosing an application and a dollar. I suggested to him that if he has he either send it to me or give it to you to send to me.

R. S. Chapter 21, Section 34, as amended by P. L. 1935, Chapter 97, Section 5, still continues to provide that "said board may revoke a certificate . . . if the person named therein . . . is guilty of immoral or unprofessional conduct. . . ."

As far as I know, the courts of Maine have not passed on this particular point; but the court of California in the case of *Parker v. Board of Dental Examiners*, 216 Cal. 285, held that the acts of dentists in aiding an unlicensed person to practise dentistry and in unlawfully using a fictitious name in practising dentistry, constitutes unprofes-