

MAINE STATE LEGISLATURE

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September 2, 1943

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Harry V. Gilson, Commissioner

Education

Frank I. Cowan

Attorney General

I have your memo of August 30th in regard to the proposed school union of Biddeford, Dayton and North Kennebunkport and have noted the contents of the copies of letters enclosed. You have asked me five questions which I will answer in the order in which they were asked.

Question 1. "Was the redistricting committee within its legal authority in combining the city of Biddeford with the towns of Dayton and North Kennebunkport in a union of towns for the purpose of electing a superintendent of schools?"

Answer. P.L. 1939, Chapter 48, seems to place on the Commissioner of Education and the committee of three referred to therein the duty of performing certain functions. This section is one of gradual growth. It appears in a different form as Chapter 19, Section 62, R.S. 1930. The section was rewritten in 1933, as appears in Chapter 219 of the Public Laws of that year. P.L. 1935, Chapter 145, kept the section as rewritten in 1933, except that it changed the year 1937 to 1938. P.L. 1937, Chapter 4, made slight changes in the section, but none of moment in connection with the question we are considering.

Under R.S. 1930, Chapter 19, Section 66, as originally written, if the superintending school committee of a city or town had under its care and custody an aggregate of more than fifty schools, it might employ a superintendent of schools without uniting. This was amended by Chapter 212, P.L. 1933, by striking out the words "fifty schools" and inserting in place thereof the words "75 teachers". I am of the opinion that the redistricting committee was within its legal authority in combining these three municipalities into a union for the purpose of electing a superintendent of schools.

Question 2. "Has the city of Biddeford rendered itself liable to the withholding of State funds as provided in Section 19, Chapter 19 of the Revised Statutes?"

Answer. Section 19, R.S. Chapter 19 provides, "When the governor and council have reason to believe that a town has neglected. . . to comply with the law prescribing the duties of towns in relation to public schools, they shall direct the treasurer of state to withhold from the apportionment of state school funds made to that town such amount as they may deem expedient, and the amount so withheld shall not be paid until such town shall satisfy said governor and council that it has . . . complied in all ways with the law prescribing the duties of towns in relation to public schools; and whenever such town shall fail, within the year for which the apportionment is made, so to satisfy the governor and council, the said amount withholden shall be forfeited and shall be added to the permanent school fund for the year next succeeding."

R.S. 19, Section 62, as amended by P.L. 1939, Chapter 48, above referred to, provides as follows: "Provided, however, that any superintending school

committee of a town dissatisfied with the combination proposed by the commissioner of education and the committee to include that town may appeal to the governor and council who shall make the final decision relative thereto."

There is no provision in the statute for the length of time that may elapse before this appeal is filed. We therefore are forced to conclude that the legislature intended that the appeal might be filed within a reasonable length of time. R.S. Chapter 19, Section 64, does, however provide that "said joint committee upon notification by the state commissioner of education shall meet. . . between April first and June thirtieth annually."

I note that the Commissioner of Education notified the Hon. Louis Lausier, Mayor of the City of Biddeford, apparently in his capacity as chairman ex officio of the school board of that city, on May 10 1943, of the grouping of the City of Biddeford with the towns of Dayton and North Kennebunkport. I am further informed by the Commissioner of Education that neither the City of Biddeford, the Town of Dayton, nor the Town of North Kennebunkport employs 75 teachers and that it is necessary to incorporate each of these municipalities into a union in order to bring the number of teachers up to the minimum of 75 set by the statute.

I note further that on August 2, 1943 Robert W. Cole who signed himself as "member of school committee of Dayton," wrote to Mr. Lausier asking for a conference on August 4th or at some other convenient time, in order to arrange for a joint meeting of the school committees of Biddeford Dayton and North Kennebunkport, "to elect a chairman and secretary of the joint committee."

I note further that on August 3rd, the city solicitor of the City of Biddeford wrote to Mr. Cole in part as follows: "I am preparing an answer to the question of whether or not the City of Biddeford is a sole entity in the matter of the selection of its Superintendent of Schools and pending receipt of that reply, I question the need of a conference."

I am further informed that since this letter of August 3rd from the city solicitor of Biddeford no word has been received from that city by either the Commissioner of Education or the superintending school committees of Dayton and North Kennebunkport; and that it has been necessary for the Commissioner of Education to appoint an agent for the latter two municipalities with authority to employ teachers, so the educational facilities of these two towns shall not be denied to their children. Moreover, up to the present time, no appeal has been received by the Governor and Council from the City of Biddeford.

It is my opinion that under the circumstances the City of Biddeford has neglected to comply with the provisions of the statute and the Governor and Council are empowered to direct the Treasurer of State to withhold State school funds from that city.

Question 3. "If the city of Biddeford is liable to the loss of State funds, to what extent can funds be withheld?"

Answer. Such amount as to the Governor and Council may seem expedient.

Question 4. "If the City Solicitor of Biddeford decides that the city should combine with Dayton and North Kennebunkport, must Dayton and North Kennebunkport recognize the election of Philip Woodworth on March 13, 1943, for a three-year period as valid?"

Answer. This is an academic question and I think it should not be raised at the present time. If Biddeford decides to accept the decision of the Commissioner of Education and the committee of three, I doubt if Question 4 will need to be answered.


Question 5. "Have the acts of Philip Woodworth as superintendent of schools in Biddeford been legal since July first, on which date a superintendent elected by the joint committee of Dayton, North Kennebunkport and Biddeford should have assumed office?"

Answer. In any case, Philip Woodworth has been superintendent de facto and his acts as such should be recognized as legal.

It was not the intention of the legislature to deprive the pupils of a municipality of educational advantages while a point of law was being discussed or litigated. The purpose of the statute providing for the withholding of funds was, it seems to me, to make it possible for the Governor and Council to impress upon a recalcitrant municipality the duty of keeping its school standards up to the minimum provisions laid down by the statutes. The superintending school committee of a town, if it believes that the law is not being correctly interpreted by the State officials, has recourse to the Governor and Council and the town should not be unduly penalized by the State officials while the point of law is being determined.

In my opinion, therefore, the State should recognize the acts of Philip Woodworth as superintendent of schools, while this point is being determined even though funds may be withheld under Section 19, to the extent that said acts are not affected by the withholding of these funds.

Frank I Cowan
Attorney General



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