

# 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

or before any magistrate commissioned by the governor for that purpose, except when the constitution otherwise provides."

The meaning of the words "civil office" has in general been defined as a grant and possession of a portion of the sovereign power and the exercise of such power within the limits prescribed by the law. The courts have distinguished generally between a "civil office" and an employment. A salary is regarded as a mere incident to the office and is not a determining factor in deciding whether or not an incumbent holds such an office.

It is impossible to lay down a general rule that will absolutely cover all cases. The law is not mathematics. The statute creating the State Military Defense Commission imposes on it certain duties which seem to be a part of the governmental function. Under the circumstances the members of that Commission should qualify by taking the oath prescribed by the statute above quoted.

I assume that it is customary to issue commissions to all persons appointed to such positions and I have taken as a matter of course that they are customarily recorded in the office of the Secretary of State. If no such record has been kept, it seems to me that it is a wise procedure to keep one.

FRANK I. COWAN  
Attorney-General

February 7, 1944

Harry V. Gilson, Commissioner of Education

A ruling has been requested by you as to the propriety of the payments by the Commissioner of Education from the apportionment of the State School Fund of Eagle Lake, which indebtedness accrued as of June 30, 1939, for secondary tuition to the following towns and academies:—

St. Joseph's Academy	\$400.00 plus \$6. int.
Mt. Merici Academy	200.00 plus \$3. int.
Town of Fort Kent	412.83
Town of Caribou	138.10
Town of Houlton	127.83
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	\$1,287.76

As we understand it, the affairs of the town were taken over by the Emergency Municipal Finance Board on August 3, 1939. In December of that year the Commissioner of Education made the payments above set forth and deducted the same from the apportionment of the School Fund to that town and remitted the balance.

The Emergency Municipal Finance Board then brought the matter to the attention of the Commissioner of Education and suggested that these payments were not properly made, as prior thereto, the town was taken over by the Board; and at the request of the Commissioner the receiving academies and towns returned the money, and the same was paid over to the Emergency Municipal Finance Board.

Your questions to this department are as follows:—

1. Should these bills have been included in the moratorium declared on all bills payable when the Emergency Municipal Finance Board assumed control?

It is the opinion of this department that under Section 206 of Chapter 19 of the Revised Statutes, the Commissioner of Education could properly pay the "receiving" towns the accounts for tuition, the same having remained unpaid on September 1st of that year, and deduct the same from the "next regular annual apportionment" as provided in said section, and this payment was proper, notwithstanding the fact that on August 3rd previous the town was placed under the control of the Emergency Municipal Board. As we view this section, the Commissioner of Education is directed to pay such accounts when the sending town has not paid them, and we consider that the accounts due for tuition become a charge upon the annual apportionment distributed by the Commissioner of Education, who by this section is directed to pay it and deduct it from the apportioned fund. It is to be noted, however, that this section specifically provides for payment by the Commissioner only to the "receiving city, town or plantation." No provision is made for payment to academies. Hence, the only payments that could be justified under this section would be to a city, town or plantation.

2. Has the Department of Education had authority at any time since 1939 to withhold these amounts from the apportionment of funds to Eagle Lake?

We must answer this in the negative. Section 206 expressly provides that the Commissioner of Education shall pay such accounts

"at the next regular annual apportionment, together with interest on such accounts at the rate of 6% annually computed from the first day of September."

Payment by the Commissioner of Education may only be made from the next regular annual apportionment and not after that. And particularly is this true under the circumstances of this case, where the town was thereafter under the control of the Emergency Municipal Finance Board.

ABRAHAM BREITBARD

Deputy Attorney-General

February 9, 1944

Guy R. Whitten, Deputy Insurance Commissioner

With regard to your memo of February 7, 1944, it is quite clear to me that under Section 83 of Chapter 60 of the Revised Statutes, you, as Deputy Commissioner, in the absence or disability of the Insurance Commissioner, or when a vacancy exists in that office, are a member *ex officio* of the Industrial Accident Commission and the Teachers' Retirement Board.

This section provides: "In the event of a vacancy in the office of the insurance commissioner, or during the absence or disability of that officer, the deputy commissioner, shall perform the duties of the *office*." Membership *ex officio* of the boards above mentioned is part of the