

# 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

in the town of Baring, a deorganized town. This injury was caused by a washout in the spring of 1943. Repairs were made at a considerable cost, the major part of which was incurred in the period from August to October of that year. The county commissioners of Washington County have made an assessment in accordance with R. S. 1930, Chapter 13, §56, as amended by Chapter 51, P. L. 1939 and Chapter 305, P. L. 1943. The latter amendment is the pertinent provision to a determination of the question here involved. It is as follows:

"Provided, however, that in deorganized towns, an assessment may be made of over 2% of the valuation thereof, in which case, the amount over the 2% shall be paid by the state out of the general highway fund on approval of the state highway commission."

Prior to the addition of this provision, as the section then stood, an assessment not exceeding 2% of the valuation on property owners in unincorporated townships and tracts of land in their counties was to be made by the county commissioners, and an assessment on the county for the balance of the amount, if the 2% was not sufficient "for repairs, cutting bushes, maintenance, snow removal and improvements, so as to comply with the provisions of the state highway laws."

By the amendment, however, special provision was made for deorganized towns and here the excess of the cost involved over 2% of the valuation was directed to be paid by the State out of the general highway fund, on approval by the State Highway Commission.

Section 59 of Chapter 13, R. S. 1930, provides for the repairs to be made in case of sudden injury, and the whole expense thereof shall be added to the next assessment to be made by the county commissioners.

We are informed that sometime in March of 1944 an assessment was made by the county commissioners of \$1,744.39. The assessed valuation of Baring for 1944 and previous years was \$55,165. 2% of this would amount to \$1,103.30. The difference is \$641.09.

We advise you that under Chapter 305, Laws of 1943, this sum is properly payable by the State out of the general highway fund and may be approved by the Highway Commission.

ABRAHAM BREITBARD

Deputy Attorney-General

April 18, 1944

Mr. A. Edwin Smith, City Clerk  
51 Read Street  
Portland 3, Maine

Dear Mr. Smith:

I am undertaking to answer your letter of the 17th inst. addressed to the Attorney-General as, with the Special Session of the Legislature here, his time is largely consumed in the matters which this body is considering.

I am likewise involved with this Session, hence I have not had the opportunity to examine the act by which the land comprising Fort

Williams was ceded by the State of Maine to the United States. I shall assume, however, and properly so, that that grant follows the pattern of others which are referred to in a reported decision of this State but involving another question. There would be grave doubt about the validity of the marriage. The authority granted to the chaplain to perform marriage ceremonies under the license issued to him is limited to marriages performed within the boundaries of the State. He thus cannot perform a marriage outside the State of Maine under that authority. Lands ceded by the State of Maine to the government for the erection of Forts, it has been held, are within the exclusive jurisdiction of the government of the United States. I have some doubt whether the act of solemnizing a marriage on a government reservation is within the State of Maine.

I would therefore advise that the marriage should be performed by the chaplain outside of the reservation.

Very truly yours,

ABRAHAM BREITBARD

Deputy Attorney-General

April 20, 1944

Harry V. Gilson, Commissioner

Education

*School Board Members who contract to convey pupils in the same town or union*

I have your memo of April 18th, in regard to school board members who contract to convey pupils in the same town or union.

I have examined the opinion issued by Attorney-General Burkett dated April 26, 1939, and he, I believe, has apparently given a correct statement of the law applicable to the case. However, it is not the responsibility of the Commissioner of Education to police the situation. We have certain acts which we call *malum prohibitum*. Proper conduct in times of emergency sometimes makes it necessary to apply the law in such cases in varying degrees. A thing we could not approve in general practice might be a necessity in time of emergency, and the statutes which the legislature has provided for our guidance and assistance must oftentimes be used in different fashions. They are, after all, the tools provided for the use of administrative officers and these officers must exercise their best judgment in using the tools. If their judgment proves poor we try to find administrative officers who have better judgment.

So it is with school board members. The exigency in which they find themselves may make it necessary that in order to perform the functions of their office they at times do, or permit, certain things which ordinarily could not be considered proper.

FRANK I. COWAN

Attorney-General

April 22, 1944

Harry V. Gilson, Commissioner

Education

*Extent of authority of Commissioner of Education over private and parochial school*

I have been giving thought to your memo of April 18th in regard to