

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

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

extent of authority of the Commissioner of Education over private and parochial schools. This is a matter that may or may not present a problem that cannot be handled without conflict of minds. We have a large and highly respectable fraction of our population who believe that the public schools are not proper places in which to bring up their children. A very eminent member of our Supreme Court some years ago told me that one or two of his children had been sent to the parochial schools because he was convinced that it was better for their morals.

We live under a semi-democratic form of government where the will of the people is presumed to be the ruling force. However, that does not mean that the will of the majority shall be absolute on the minority, but that due consideration shall be given to the rights and also to the scruples of the minorities.

The parochial schools are essentially adjuncts of religious bodies. To the extent that those religious bodies feel that they can safely coöperate with the secular bodies there should be no difficulty in making adjustments. I believe that a large part of the reluctance of those operating parochial schools to permit more close supervision by public officials is because of their fear that these parochial schools may be subordinated in course of time to the law of the majority as expressed through the public officials.

History has shown that as people we are still so lacking in real intelligence that we are intolerant of the ideas of other people, and the religious antagonisms that flare into open conflict from time to time are ample demonstrations of that fact.

My thought is that a conference between the Commissioner of Education and the Roman Catholic Bishop of Portland with a frank interchange of views might very well result in a decision by the Bishop to avail himself of the assistance of your department to a larger extent. We may have the statutory authority to make investigations of these schools and to demand that the courses of study shall conform to the statutory requirements and that the teachers shall at all times be qualified as provided in our laws, but we are dealing with a very large group of our population and with numerous schools, and any compliance along those lines must be a willing compliance in order to be effective. As a matter of fact, I believe that without the active and zealous assistance of the Bishop no real accomplishment along that line is possible.

If you can convince him that his schools are failing in some respects, and if you can further reassure him so that he will be willing to accept your help in bringing them up to standard, and if you can further overcome the argument which he may raise that if his schools are slightly sub-standard in some respects, our public schools are sub-standard in other respects which he considers of more importance, you will have gone a long way toward accomplishing your objective. I think you will never be able to convince him that our public schools are as good as his in the matter of moral instruction, and that moral instruction, I am informed, is a very important consideration in his mind and in the minds of his associates. He will not surrender that

point under any circumstances and no amount of pressure will ever succeed in making him lower that standard and certainly we have no wish to quarrel with him about that. You have a problem and it is a ticklish one, but as I said before, I see no reason for considering it insurmountable.

FRANK I. COWAN

Attorney-General

April 27, 1944

Earle R. Hayes, Secretary, Employees' Retirement System

I have your memo of April 18th in regard to employees of the legislature. The Secretary of the Senate and Clerk of the House of Representatives are, it is true, provided for in the Constitution; but there is no constitutional limitation on their terms of office. Being elected, they continue in office during the life of the legislature which has elected them, unless in the meantime the legislature sees fit to elect somebody else, or unless there is a vacancy created by removal or resignation. These offices differ from the positions of certain town officials who, the courts have stated, cannot resign without permission from the town that has elected them, due to the fact that people are just as much subject for draft to perform civilian service as to perform military service.

The most recent statutory enactments in regard to the Secretary of the Senate appear in P. L. 1931, Chapter 256. This amends the Revised Statutes and changes the period for which the Secretary shall receive a salary. As you will note, the language of the amended R. S. Chapter 125, Section 11 (the last sentence of the first paragraph thereof) is as follows:

"He shall receive a salary of \$2,000 in full for all official services by him performed during the regular session of the legislature."

Said section, as amended, contains the following sentence at its end:

"The above salaries shall be in full for all official services performed during the regular session of the legislature and no other compensation shall be allowed them, except in case of adjourned or special session of the legislature."

This seems to change the status of the Secretary of the Senate, because before the amendment said Section 11 contemplated the possibility of his having to perform services for an indefinite period throughout the term of his service. It is my opinion that in view of the language of the revision, the time credited for the Secretary of the Senate should be based on four things: (1) the entire month of December prior to the convening of the legislature in regular session; (2) the length of time that the legislature is in regular session; (3) the length of time that the legislature is in special session, and (4) any additional time that the Secretary has actually put in, in preparing for special sessions or in clearing up the work of the office after the adjournment of any session.

In regard to the Clerk of the House, we find statutory provisions in R. S. Chapter 125, Section 12, as amended by P. L. 1931, Chapter 254. Here, again, we find a change in the language which seems to be a