

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

The substitute teacher comes secondary to the returning service man.

The municipality should be very careful about making contracts with substitute teachers because if they make a binding term contract and the original man comes back, the returning service man is entitled to his job and his pay by reason of the law, while the substitute may be entitled to the pay by reason of his contract; thus if the contract does not take into consideration the possibility of its being avoided through return of a service man, the municipality may very well find itself paying two salaries for one piece of work.

A town has fulfilled its obligations to a school employee when he is reemployed for a period of time which represents the unexpired part of his original contract.

If a superintendent of schools has served two years on a three-year contract, the town is within its rights if it permits him to serve out his original contract after his return and then discharge him. A town, in the interest of teaching efficiency, cannot delay the replacement of a discharged service man until the end of the next school year or the next school term. Under the law, as we interpret it, he is entitled to reinstatement immediately.

FRANK I. COWAN

Attorney-General

September 14, 1944

State Police

Capt. Laurence C. Upton, Acting Chief

Beano

I have your memo of Sept. 13, asking three questions in regard to Beano. I will answer them in the order in which you ask them.

1. Our general Sunday laws are still in effect. There is no suggestion of repeal in the Beano act. The intention of the legislature in limiting licenses to six-day periods was in order to avoid any suggestion of Sunday beano.
2. P. L. 1943, c. 355, §1, in its first sentence, uses the language—
“. . . shall hold, conduct or operate the amusement commonly known as 'Beano' for the entertainment of the public within the state unless a license therefor is obtained from the chief of the state police." There is no question but what the operation by an agricultural fair without making a monetary charge to participants is, nevertheless, an operation "for the entertainment of the public." Whenever and wherever the amusement commonly known as Beano is conducted or operated "for the entertainment of the public" a license must be obtained.
3. The answer to Question 3, is "No." The reason is included in the answers to Questions 1 and 2.

FRANK I. COWAN

Attorney-General

September 22, 1944

I. W. Russell, Superintendent of Public Buildings

Superintendent of Public Buildings' Law

In your memo of August 30th you ask to be advised with regard to your duties under circumstances which you set forth as follows:

"The question has arisen as to my authority in connection with the postwar building program for other departments. I would definitely like to know 'Do I have the authority to approve the selection of architects for these buildings, which shall include the fee paid these architects and how they shall prepare these plans; that is, to state to the architects whether or not they shall hire competent heating, structural, and electrical engineers to work with them on plans."

Your duties are specifically defined by Chapter 176 of the Laws of 1943. With respect to your authority so far as buildings and property under the control of department heads are concerned, paragraph two of Section 4 is as follows:

"Upon the request of department heads concerning buildings and property under their control, the superintendent shall supervise the construction, repairs, alterations and improvements to said buildings and property. The superintendent shall regularly inspect all buildings and property in the state and report to the department head concerned whatever construction, repairs, alterations and improvements are necessary, and he shall, if he deems it advisable, make a similar report to the governor and council."

You would thus have no duty or authority to supervise the construction, etc., of these buildings, unless you were requested to do so by the department head. Without such request you have only the duty of inspection and of reporting to the department head, and, if you deem it advisable, to the governor and council.

I think, however, that under Section 5, which provides that

"All contracts for repairs and construction of state buildings shall be examined and approved by the superintendent of public buildings prior to their submission to the governor and council for their final approval and acceptance,"

you have a duty to examine and approve all contracts for repairs and construction of all State buildings, and you might refuse to approve a contract which you felt was not proper, beneficial to, or in the interests of the State, and submit your criticism thereof to the governor and council.

While this would not involve the selection of the architect, the question of the reasonableness of the fee and all the other elements in your question would be involved in the approval of the contract.

ABRAHAM BREITBARD

Deputy Attorney-General

September 23, 1944

Harold B. Emery, Chairman, Liquor Commission

You inquire as a member of the Liquor Commission as to your status after October 1, 1944, which date marks the end of the third year since your appointment. This question now arises because no appointment has been made by the Governor of a successor to assume the duties of the office now held by you.