

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1945-1946

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“When for any reason whatsoever a recipient of old age assistance is unable to properly indorse the check for the last payment approved for him prior to his death the department may approve payment by the state of obligations incurred by the recipient for board or medical or nursing services in anticipation of the receipt of such check but not in excess of the amount of the check. . .”

The facts stated are that the recipient died on October 28, 1945, while the check in question was issued on November 9, 1945, and the Department of Health and Welfare approved a payment for medical care which would consume the amount of the check. Your inquiry is whether this statute applies to checks issued after the death of the recipient.

The date of the issuance of the check is of no criterion, because the statute provides that it is the approval of the payment that controls. Thus, if the payment was approved by the department prior to the death of the recipient, the proceeds of that check would be available for the payment of any obligation incurred by the recipient. The purpose, of course, of allowing these claims to be paid out of the proceeds of the check was to avoid the necessity of administration of the estate of the recipient, in case he died before the receipt or cashing of the check. If then, the approval for this payment to the recipient by the department was made prior to October 28, the proceeds of the check issued on November 9th may be used to pay the doctor's bill. If the approval for payment was made after his death, then the proceeds of the check may not be devoted to that purpose.

ABRAHAM BREITBARD
Deputy Attorney General

February 21, 1946

To Harry V. Gilson, Commissioner of Education
Re: Payment of Subsidies—Education of Physically Handicapped
Children

Receipt is acknowledged of your memo of February 15th with regard to payment of a subsidy to “local school districts” for the education of physically handicapped children, provided for by an act passed by the present legislature, which became law on July 21, 1945, being Chapter 149 of the Laws of 1945.

The determination of the amount to be paid or apportioned to such districts is on an individual pupil basis, but not at a cost exceeding \$200 per school year and in cases where pupils are to be boarded away from their home districts the excess cost is to be then not more than \$350 per school year. Excess cost is the “excess cost of such education over and above the average per capita cost of educating normal children in their respective school districts.”

This act appropriated \$7500 for subsidies for the fiscal year ending June 30, 1946, and \$10,000 for the year ending June 30, 1947.

Doubt has arisen as to the time of payment of the subsidies provided under this act, because at the same session by Chapter 350, Section 24, it was provided:

“Apportionments to be made in December. All apportionments to cities and towns under the provisions of this chapter shall be made annually in December.”

This amendment becomes Section 211-A of Chapter 37 and the act first referred to becomes a part of the same chapter. The question is then whether the latter is applicable to the payment of the subsidies provided in the former act.

If it was so determined, the appropriation, it is said, would lapse after the end of this fiscal year unless it was paid before the close thereof.

I am of the opinion that Section 211-A is not applicable to this act. Under this act there was created “a division of special education” within the department of education. In section 180-D it is provided:

“The excess cost shall be paid to local districts under the direction of the division of special education.”

Payment is to be approved by the Commissioner of Education. Section 180-G. The payment is to be computed on a school year. Section 180-D.

In view of these provisions I believe that payment may be made when the division of special education so directs, subject to the approval of the Commissioner, and such subsidies may thus be made on or before June 30, for the fiscal year ending in 1946.

ABRAHAM BREITBARD
Deputy Attorney General

February 27, 1946

To John C. Burnham, Administrative Assistant, SHC

Answering your memo of the 25th of February, it is our opinion on the facts set out therein that a permit may be granted to the operator under the provisions of Chapter 217, P. L. 1945.

This act does not confine the issuance of permits to the owner of the vehicle. Thus it may be issued to the lessee, operating the vehicle.

This is confirmed by Section 93 of Chapter 19, which provides that highway officials may require a bond from the owner or operator to indemnify the State or the municipality for damage to any way or bridge by the vehicle under permit.

ABARAHAM BREITBARD
Deputy Attorney General