

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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May 23, 1946

To Harry V. Gilson, Commissioner of Education

Re: Payment to Private School of Elementary School Tuition, etc.

Consideration and study have been given to your inquiry of April 4th, wherein you asked to be advised whether under Sections 142 and 143 of Chapter 37, R. S. 1944, elementary school tuition may legally be paid to a proposed private school, and, if so, whether in addition thereto transportation or board in full or in part may be paid for such pupils. This has relation to pupils residing in an unorganized township.

You are hereby advised that such tuition and transportation or board are allowed only where the pupil is sent to a "public elementary school in the state," who "shall be entitled to all privileges and benefits and be subject to the same rules and regulations as children residing in the municipality to which they are sent." It is very clear from the language here employed that this cannot relate to a private or parochial school.

ABRAHAM BREITBARD

Deputy Attorney General

May 27, 1946

To Alfred W. Perkins, Insurance Commissioner

Re: Consolidated Underwriters

In your memorandum of April 24th, which concerns Chapter 56, Sections 210-217 inclusive, providing for reciprocal contracts of indemnity, you ask for an opinion as to whether:

- "1. If an Inter-insurer were admitted to the State of Maine, would it be entitled to write Workmen's Compensation insurance and Employers' Liability insurance since it is not an insurance company within the meaning of the general insurance laws?
2. If it were permitted to write this coverage, would it be conditioned upon their having to file rates for approval based upon manual classifications?"

Upon the assumption that the documents submitted to you by the applicant would entitle it to be admitted to do business in this State, we answer both questions in the affirmative. While it is true that under Section 210, it is provided that the making of contracts of indemnity thereunder "shall not constitute the business of insurance and shall not be subject to the laws of this state relating to insurance, except as provided in this section and the 7 following sections" (the exceptions therein provided are not pertinent here) nevertheless under Chapter 26, which is our Workmen's Compensation Act, provision is there made requiring that insurance companies issuing industrial accident insurance policies covering the payment of compensation and benefits provided for in that Act shall file with the insurance commissioner a copy of "the form of such policies, and no such policy shall be issued until he has approved said form. It (the insurance company) shall also file its classification of

risks and premium rates relating thereto, and any subsequent proposed classification thereof, none of which shall take effect until the insurance commissioner has approved the same as adequate for the risks to which they respectively apply. He may require the filing of specific rates for workmen's compensation insurance including classification of risks, experience, or any other rating information from insurance companies authorized to transact such business in Maine. . . ."

Section 2 of the Act defines the words and phrases therein used. Subsection 5 reads: "'Industrial Accident Insurance Policy' shall mean a policy in such form as the insurance commissioner approves, issued by a stock or mutual casualty insurance company or association that may now or hereafter be authorized to do business in this state. . . ." Subsection 6 reads: "'Insurance Company' shall mean any casualty insurance company or association authorized to do business in this state. . . ." I think that the word 'association' would be applicable to reciprocal contracts of indemnity, as in the decided cases the subscribers are sometimes referred to as an association or a group of subscribers who associated themselves to insure one another, including themselves, so that each individual subscriber is both the assured and the insurer.

In writing this memo I have confined myself to the questions put in your memorandum, but in addition thereto I think I ought to say to you that I am not quite clear as to the provisions of our statutes relating to reciprocal contracts of indemnity. For example, all the subscribers appoint an attorney in fact, at whose office the policies are written and exchanged. The form of the policies that have been submitted appears to be the contract of the subscribers through the attorney in fact.

Under Section 211 of Chapter 56, suits may be brought in the county where the property insured is situated, and service of the process is to be made on the Commissioner of Insurance, who is designated by the attorney in fact by an instrument in writing executed by him for said subscribers, agreeing that service of process may be made upon the Insurance Commissioner in any action brought on a policy. The last clause of this section, speaking of the instrument, namely the writing appointing the Commissioner of Insurance to receive service of process, provides that it "shall be binding upon all the subscribers."

What I cannot understand is, who the party defendant is in the suit. There is nothing in the policy or in any other instrument that tells the insured who the subscribers are, or where they are located, or what the extent of their liability is. The statute is not quite clear as to whether the liability is joint or several, or joint and several.

I may also add that in the documents submitted, wherein T. H. Mastin & Company, under that name, by written power of attorney, designates the Insurance Commissioner as attorney upon whom process may be served in this State, the company appears to be a partnership, and this instrument and others are made in the partnership name, "T. H. Mastin & Company." It would seem to me that these powers of attorney should

be made by naming the individuals who comprise the partnership doing business under that name. As the papers are now written, we don't know who the partners are, or the persons composing the firm. All that appears in the documents is the firm name, and they are signed in the firm name by a single member.

I also can't understand where Consolidated Underwriters fit into the picture. A power of attorney is also submitted in that name, and signed in its name by the T. H. Mastin Company, as attorneys in fact. This apparently is the place provided by the attorney in fact to exchange policies by the subscribers. There appears to be nothing in any of the documents submitted to show that the subscribers have associated themselves under that name.

I understand that several of these exchanges have been admitted to do business in this State, writing either fire insurance or casualty, but not Workmen's Compensation. I think that more study should be given by the department to this subject. . . .

ABRAHAM BREITBARD

Deputy Attorney General

May 29, 1946

To Harrison C. Greenleaf, Commissioner of Institutional Service

Answering your memo of May 22nd, concerning the group of boys who in March 20, 1946, escaped from the Reformatory for Men and while at large committed various crimes of the grade of a felony and were sentenced in the Superior Court of Cumberland County and the Superior Court of York County therefor, to terms in the State Prison:

All the boys still had substantial parts to serve of their original sentences. You direct my attention to Section 71 of Chapter 23 of the Revision of 1944, where provision is made that if an inmate of the Reformatory escapes, the superintendent may so certify on the original mittimus and recommend his transfer to the State Prison, and upon approval of the Commissioner of Institutional Service, the inmate shall be transferred to the State Prison to serve the remainder of the term for which he might have been held at the Reformatory; and you say that you intend to invoke the provisions of this chapter, so that these boys will first serve the remainder of the original term at the Reformatory before commencing the prison sentence by the Superior Court.

I advise you that this cannot now be done, for two reasons: 1) I think that Section 71 contemplates that the inmate who escaped has been returned to the Reformatory and it is then that the transfer can be made; I am of the opinion that no effective transfer can be made while the inmate is still at large; 2) the sentences in the Superior Court having been imposed and the mittimus issued, and the boys having been received at the State Prison, the sentences commence to run at once and it is not then in your power to postpone the commencement of these sentences, as that power resides in the sentencing judge only, unless a statute makes provision therefor. Section 71 to which you refer makes no such provision.