STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1945-1946

June 27, 1946

To Earl Hutchinson, Director of Secondary Education

I have heretofore discussed orally with you the question pertaining to the issuance of high school equivalency certificates for those who have not completed a regular high school course, either to veterans or to civilians who failed to graduate from high school but who may possess the qualifications to entitle them to an equivalency certificate, the latter of which they may now find necessary in order to secure a position which requires some academic education. Your inquiry is whether the Department of Education has a legal right to issue a State high school equivalency certificate based on an examination program and whether the Department could collect legally the necessary fees to defray the expenses of purchasing and conducting such examinations.

It seems to this department that where the proposed program would require an expenditure of money for which there is no provision under existing law, legislation should be had on the subject, which would also authorize the department to fix and collect fees from applicants for the certificates.

I believe the plan is a very worthy one and should have the support of the department.

ABRAHAM BREITBARD
Deputy Attorney General

July 1, 1946

To Harry V. Gilson, Commissioner of Education
Re: Election of Superintendent of Union No. 4

This department acknowledges receipt of your memo of July 1 concerning the election of a superintendent of Union No. 4. To this memo were attached various returns, the minutes of various meetings held, and correspondence. This Union is composed of the City of Biddeford and the Towns of Dayton and North Kennebunkport. The superintending school committee of Biddeford is composed of five members, including the mayor who is an ex officio member. Each of the towns has a superintending school committee consisting of three members. The towns appear to be in utter disagreement with Biddeford on the choice of a school superintendent. It appears that the Towns of Dayton and North Kennebunkport requested that a joint meeting be held for the purpose of electing a joint superintendent, which the statute requires be done on or before June 30th; and not having received any response to their request from C. M. Cheney as chairman of Union No. 4, who is a member of the school committee of the City of Biddeford, these two towns then instructed their secretary to call a meeting, notifying all members of the joint committee, for the 25th of June, 1946. After this meeting was called, the chairman of the Biddeford school committee called a meeting for the 26th at Biddeford. The earlier meeting of June 25th was to be held at Dayton town hall in the town of Dayton.

The reports of these meetings indicate the following: At the meeting called by the Towns of Dayton and North Kennebunkport on June 25th, the members of the school committees of these towns, six in all, were present and they thereupon proceeded to elect a chairman pro tem. and to elect a superintendent for the Union and named Robert H. McCarn and thereupon proceeded to apportion the time to be spent in each town and the amount to be paid by the several towns of the joint union.

On the following day, at the meeting called by C. M. Cheney as chairman, only those members of the Biddeford school committee comprising five in number attended, and they thereupon by vote vetoed the acts of the preceding meeting held the day before, by the following resolution, "Without prejudice and without waiving any rights that the action of the rump meeting called by Mr. Peterson and the acts of that meeting be vetoed." They thereupon proceeded to elect a school superintendent, naming Philip R. Woodworth by casting five ballots for him and thereupon apportioned the time to be spent in the various towns and the amount that each was to pay.

With this brief summary, we proceed to answer your inquiry whether there was a choice at these elections of a school superintendent of the union.

First. Is the legality of the meeting called by the secretary of the union, which was based on the alleged refusal of the chairman, Mr. Cheney, to call a meeting, in doubt?

It does not appear from the papers submitted to me, nor from the records in your office, that Mr. Cheney was ever selected as chairman by the joint union. However, the several parties assumed that he was, as they so addressed him, and perhaps he was selected as chairman; but, as I said, I find no record of it in the papers submitted nor in the file in your office. I think that, where the chairman of a joint union unreasonably refuses to call a meeting, the secretary may do so and if a quorum is present, that the action taken at this meeting would be legal. In making this observation, I do not want it to be understood that I am imputing that the chairman unreasonably neglected to call a meeting. Evidently, the members of the school committees representing the towns so concluded and thus took this means of calling a meeting. Irrespective, however, of the correctness of these observations, the statute requires that the election of a school superintendent shall be subject to the approval of the superintending school committee of the town or city having a majority of the teachers of the towns composing the union and paying not less than one-half of the salary of the superintendent. The City of Biddeford having the greater number of teachers and paying at least four-fifths of the salary, the election of a superintendent of the joint union would thus be subject to the approval of the school committee of that city. This they have not given, so that the action of the Towns of Dayton and North Kennebunkport would not effectively elect a school superintendent.

Second. The meeting called by Mr. Cheney was held on the following day and was attended by the five members comprising the school committee of the City of Biddeford. Any action that this committee took, in so far as the attempt to name a superintendent is concerned, would be ineffective, since five would not constitute a quorum for the transaction of business. The committee being composed of eleven members, any legal action to be taken by this committee would require the attendance of at least a majority of the membership, which is a minimum of six.

Third. The future action, therefore, to be taken by you is to notify the various members composing this joint committee that there was no choice of a superintendent as a result of the meetings that were held on June 25th and June 26th, and, no legal election having been had on or before June 30th, that they should proceed to call a meeting to name an agent, unless they shall elect a superintendent or agree on the naming of a person to act as superintendent and upon all the other terms set out in the statute with relation to time and the proportionate part of the salary that each is to pay.

ABRAHAM BREITBARD
Deputy Attorney General

July 2, 1946

To E. L. Newdick, Chief, Division of Plant Industry

Receipt is acknowledged of your letter of June 28th, relating to the Woodman Potato Company, Presque Isle, which company is now in receivership. You say that the company, prior to the appointment of the receiver, was indebted to the department in the sum of $405.50 for inspection work, but that under the statute the company would be entitled to a rebate of $291.47.

This department advises you that this rebate is to be set off against the indebtedness, which would leave a balance due to the State of $114.03. Since the company is in receivership, this balance cannot be collected in full, unless the operation by the receiver is successful to the end that creditors will be paid in full. Otherwise, the distribution to the creditors will be according to their proportionate share.

You also advise that the receiver has made application for inspection for the current year. The provisions of the law which would deprive a person who had had inspection work while he was indebted to the department, would not apply in this case. The operation of the company is now in the hands of the court through a receiver, and hence, upon application by the receiver, inspection may not be refused because of a previous indebtedness of the company.

I would suggest, however, that you inquire from the receiver whether the court has authorized the receiver to apply for inspection, as the receiver can only obligate himself to the extent that the court allows him to do so. If he has such a court order, the department may proceed to render the inspection services and bill the receiver therefor.

You may also ask him to apply to the department for inspection.

ABRAHAM BREITBARD
Deputy Attorney General