

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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July 8, 1946

To David H. Stevens, State Assessor

I received your memo of June 26th, enclosing a copy of a letter which you had received from the Colonial Beacon Oil Company and also a copy of a ruling from former Attorney General F. U. Burkett, dated October 25, 1939, relating to this subject matter.

After reading the copy of the letter from the Colonial Beacon Oil Company and the copy of the letter from former Attorney General Burkett, and upon examination of the statute and amendments thereto, I agree with Attorney General Burkett's letter that there is no tax exemption statute in regard to this matter.

RALPH W. FARRIS
Attorney General

July 13, 1946

To Wallace C. Philoon, Administrative Assistant, Executive Department

Receipt is acknowledged of your memorandum of July 11, concerning "The National School Lunch Act," and the file attached thereto.

I can see no harm in inquiring from the Secretary of Agriculture whether that department will not undertake to administer the program until an appropriation is made by our legislature to take care of the staff or personnel necessary to administer the fund.

From a reading of the Bill, it would appear that the policy of the Congress was to impose upon the States the costs of the administration of the program. I have confirmed this with the Commissioner of Education, who attended the conference in Washington and who informs me that that was the deliberate intent of Congress. Hence, where the State Educational Agency had no legal authority and the staff to administer the School Luncheon Program, it was provided that the administration thereof may be conducted by such agency as the Governor shall designate.

Under Section 14 of Chapter 12, there is sufficient authority for the acceptance of these Federal funds and the administering thereof with the consent of the Governor and Council, and under this statute I am of the opinion that where the Department has no available funds in its appropriation for the costs of administering thereof, the Governor and Council may provide such funds by transfer from the contingent funds.

In answer to your second question, it is not my understanding that the costs of administering the fund are matched by the Government or vice versa. It would seem that the entire cost of that is imposed on the State. "Nonfood assistance" under Section 11, Subsection 4, "means equipment used on school premises in storing, preparing or serving food for school children." I am informed by the Commissioner of Education that prior to this act, Public Law 396, the distribution was made by the Production and Marketing Administration of the Department of Agriculture to the

schools directly and they were permitted to deduct or to offset the costs in matching the Government contribution by the equipment and the storing, preparing and serving the lunches. I think that the Department of Education should be able to devise some means of apportioning the costs of administering the program to the various towns and municipalities.

ABRAHAM BREITBARD
Deputy Attorney General

July 15, 1946

To Dr. Leverett D. Bristol, Commissioner, Health and Welfare
Re: Basis for Fair Hearing

I have your memo of July 10th, attaching 1) a memorandum from you to Mr. Haines and Miss Smith of your Bureau of Social Welfare and Public Assistance on the subject of the "basis for fair hearing"; 2) a memorandum from Mr. Haines to you on the subject; and 3) application blank for old age assistance and instructions to applicants in that connection; and by reason of Mr. Haines' suggestion in the last paragraph of his memorandum to you, you are referring this matter to me for a possible decision.

Section 262 of Chapter 22, R. S. 1944, provides that "any person who is denied assistance or who is not satisfied with the amount of the assistance allotted to him, or who is aggrieved by a decision of the department made under any provision of sections 256 to 274, inclusive, shall have the right of appeal to the commissioner, who shall provide the appellant with reasonable notice and opportunity for a fair hearing."

It is my opinion that this statute does not cover delay as a reason for appeal for a fair hearing. An applicant's basis for an appeal must be that he was denied assistance, not satisfied with the amount of assistance allotted to him, or aggrieved by a decision of the department. These are grounds for an appeal to the commissioner, and the law provides that the commissioner shall provide the appellant with reasonable notice and an opportunity for a fair hearing. Then the commissioner can designate a member of the department and authorize him to hear the evidence pertinent in the case and render a decision thereon within a reasonable period after the date of the hearing. The question of a "reasonable period" is one to be applied to each individual case.

There is no provision for appeal from the commissioner's finding, that the applicant did not have a fair hearing.

In regard to Section 260 of Chapter 22, R. S. 1944, as amended by Chapter 251 of the Public Laws of 1945, it has no application to Section 262, which gives the right of appeal, and the wording of Section 260, as amended, "Every person residing in this state shall be entitled to assistance in old age," is subject to the qualifications and restrictions contained in Sections 256 to 274, and any words written in on the application which are not provided for in our Maine law are of no effect, and the Social