

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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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

Security Board has no power to amend our statutes by writing in the words "or delay" where same were not placed there by the legislature.

I would suggest to the applicant that he base his reason for appeal, 1) he was denied assistance; 2) he was not satisfied with the amount of assistance; 3) he is aggrieved by a decision of the department.

RALPH W. FARRIS
Attorney General

July 17, 1946

To H. H. Harris, Acting Controller

I have your memo of July 15, asking whether, under the provisions of Chapter 79, P. & S. Laws 1941, where authority is given to the Treasurer of State under the direction of the Governor and Council to issue bonds not exceeding \$2,000,000 to be used for the purposes stated in that chapter, this authority still holds for the year 1945-46. In answer to this I will say that it is the opinion of this office that the said special law was passed in 1941 under the emergency clause for military purposes, and the emergency for which this authority was created has ceased to exist and that the authority does not hold for the year 1945-46.

Your second question is whether or not under Chapter 104, P. & S. Laws 1941, Special Session Laws, 1942, where authority is given to the Treasurer of State with the approval of the Governor and Council to issue bonds up to \$1,000,000 to be used for the purposes stated in that chapter, such authority still exists for the year 1945-46. In answer to this second question I will say that it is the opinion of this office that the purposes for which this bond issue was authorized by the legislature have ceased to exist, as it was passed under emergency legislation and the emergency for which it was passed has ceased to exist and some of the bonds, as I understand it, have been issued and the money available under the act was impliedly to be expended in the fiscal years ending June 30, 1942 and June 30, 1943, and any unexpended balance should not lapse but be carried over to the same account to be used only for the purposes set forth in the act. It is my opinion that this authority does not hold for the year 1945-46.

RALPH W. FARRIS
Attorney General

August 5, 1946

To Harry V. Gilson, Commissioner of Education

I have your memo of August 5th, stating that Kezar Falls Village, which includes parts of the towns of Parsonsfield and Porter, is located on the two sides of the Ossipee River and that both towns maintain schools within the village limits. You further state that the school committees of the two towns have formulated a plan for pooling their school building facilities so that each teacher would have pupils of one grade