

# 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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November 5, 1946

To W. C. Philoon, Administrative Assistant, Executive Department

I have examined the various quitclaim deeds drafted by the Highway Commission for the Governor and Council to sign, conveying certain land heretofore acquired by the Commission for highway purposes.

The statute, Section 13 of Chapter 20, provides:

“The governor and council on recommendation of the commission may sell and convey on behalf of the state the interests of the state in property taken or acquired by purchase under this section and deemed no longer necessary for the purposes hereof. . .”

While a council order does not seem strictly essential, since the deeds are signed by the Governor and all the members of the Council or a majority thereof, nevertheless before they act, they should have a recommendation signed by either the Commission or the chairman thereof, that they deem the land no longer necessary for highway purposes and thus recommend its sale.

ABRAHAM BREITBARD  
Deputy Attorney General

November 6, 1946

To H. V. Gilson, Commissioner of Education  
Re. Fees Charged for Attending State-subsidized Evening Schools;

Sections 32, 35, and 166, Chapter 37, R. S. 1944.

I have your memo of October 31st, asking the following questions:

“Is it permissible for towns or cities which maintain evening schools through local taxation, and which towns are reimbursed from state funds, legally to require the payment of tuition or registration fees for attendance therein by citizens of the community?”

My answer to that question is in the negative, as Section 32 provides for the admission of persons over 16 years of age to evening schools under the direction and supervision of the superintending school committee.

Your next question is the same except “By citizens of other communities?”

My answer to that question is in the affirmative, to make a reasonable charge to citizens from other communities.

Your next question is: “If in your opinion such charges by the town are legal, is there any limitation on the extent or size of fee which a town may charge?”

*Answer.* This is a matter for the superintending school committee and the Commissioner of Education to work out. I do not feel that the town should realize any financial profit from these tuition and registration fees charged.

The next question is as follows: "In respect to evening schools, can a superintending school committee, after a vote of the town to raise funds for this purpose, contract with an academy located within the town to furnish said evening school education?"

*Answer.* With the permission of the Commissioner of Education, under the provisions of Section 166 this can be done, and it would be construed to be under the direction and supervision of the superintending school committee, if it meets with the approval of the Commissioner of Education in regard to the qualifications of instructors, length of term, class attendance, and subjects offered.

Your next question is: "If such contracting is possible, may the state reimburse the town for 2/3 of the cost of instruction?"

My answer to this question is in the affirmative. I do not believe it would be good policy for the academy to make a profit on the evening students.

In regard to Section 35, there is an error in the Revision of the Statutes, 1944, in that it refers to Sections 32-34, inclusive. It should refer only to Section 34, which has to do with manual training. My reason for saying this is that upon examination of Chapter 11, P. L. 1935, which amended Section 25 of Chapter 18, R. S. 1930, and Section 167 of said chapter, which took care of this situation, and there is no amendment of legislature that includes the provisions of Section 32, R. S. 1944, as to limiting the age to 21 years.

Upon checking the notes in the Revisor's office, I find that Section 32 was included in Section 35, which has to do with evening schools and should not properly be in said Section 35; but the same was adopted by the legislature in September, 1944. It should be eliminated at the next session of the legislature.

RALPH W. FARRIS  
Attorney General

November 13, 1946

To E. E. Roderick, Deputy Commissioner of Education

In your memo of November 12th to this department, you wish to be advised to whom payment should be made of contributions on decease of a member of the Teachers' Retirement System, before he became eligible to retirement, and who had withdrawn from service shortly prior to his death. In his application he designated his mother as "beneficiary" to receive these contributions in the event of his death. Upon his decease it appears he left a wife surviving.

Section 233 of Chapter 37, so far as here pertinent, is as follows:

"I. Any member of the retirement association withdrawing from service in the public schools of the state, by resignation or dismissal, before becoming eligible to retirement under the provisions of sections