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February 4, 1947

To William S. Linnell, Esquire
Re: Relationship of Academy and City

I received your letter of January 31st which supplemented your conversation with my Deputy, Mr. Breitbard, during my absence and our subsequent conversation on the telephone, also giving me a clearer picture of the situation which has arisen in Saco respecting the relationship of the City of Saco and Thornton Academy.

When I talked with Commissioner Gilson in October and gave him my opinion, I was informed that the academy and the City of Saco were operating under a contract and that the trustees refused to have anything to do with a joint committee consisting of the superintending school committee of Saco and an equal number of trustees of the Academy. As you state, the misstatement of fact to my office was not quite fair, inasmuch as you assure me that the City of Saco and the Academy have not been operating under a contract since June, 1946. That being the fact, of course it would not be in order for the City of Saco to request the formation of a joint committee.

The city solicitor has written me and talked with me on the telephone on two different occasions about this matter and in the course of our last conversation on the telephone I informed him that there was no contract and, that being the case, it would not be in order for the city to pass a vote requesting the formation of a joint committee of the Academy and the City of Saco, and thus the matter stands.

In your letter of the 23rd you propounded the following questions and answers which you state seem simple:

"(1) Can Thornton Academy be compelled to contract with the City of Saco on the theory that Sec. 96 of Ch. 37, R.S. 1944 is an amendment of the Charter granted the Academy in 1811?

The answer must be, 'No.'"

. . . I agree with you, and no ruling of this office has ever stated that Section 96 of Chapter 37 amended the original charter of the Academy granted in 1811.

The only question involved in my opinion to the Commissioner was that if the Academy and the City of Saco had entered into a contract and the amount to be paid under the contract equalled or exceeded the income of the Academy for the preceding year, exclusive of sums paid the Academy by the City of Saco, a joint committee should be requested.

"(2) If a contract is to be entered into can the Academy be compelled to make a contract through the School Committee under Sec. 96, or may it contract directly with the Council under Ch. 500 of the Public Laws of 1885?

Your answer, I understand, would be that it must be under 96. My view, that it may be under either."

My comment on your answer to that question is that it must be under the provisions of Section 96, as Chapter 500, P. L. 1885, only authorizes the Academy to enter into a contract with the City of Saco for the tuition of scholars within said city for one or more years, and if the trustees of the Academy enter into a contract, it is mandatory that there be a joint committee formed as provided in Section 96.

- "(3) If a contract is entered into and joint Board control is desired, must it be upon the request of the City, voted by its City Council?

The answer must be 'Yes.'"

I agree.

- "(4) May the Academy decline to enter into a contract unless the contract provides that the City will not request joint Board control?

The answer must be 'Yes.'"

It is my opinion that the Academy can decline to enter into a contract; but the City of Saco cannot waive the provisions of Section 96, which are mandatory, relating to the formation of a joint committee.

- "(5) May the City waive its right to request joint Board control by accepting a contract providing no request will be made?

The answer must be 'Yes.'"

I regret to say that that answer is contrary to my interpretation of Section 96, because the City of Saco has a public school system under the jurisdiction of the Commissioner of Education, and in handling its school affairs it must be guided by the statutes governing same, so that if there was a contract entered into providing that the city would waive its right to request joint board control, and the amount to be paid under the contract to the Academy should equal or exceed the amount of the income of the Academy for the preceding year exclusive of sums paid said Academy by the contracting town, a joint committee shall be formed; and, as you know, the said joint committee shall be empowered to employ teachers, fix salaries, arrange courses of study, etc. It is my opinion, if the city did not request a joint board, that the Commissioner of Education would be justified in withholding the City of Saco's stipend from the public school fund.

However, if the trustees see fit to enter into a gentlemen's agreement, with no contract, accepting students at the Academy at \$110 per pupil, I agree that neither the State nor the City can force the Academy into a joint board control.

- "(6) Can the City educate the children of Saco at the Academy without a contract?

The answer, of course, is 'Yes.'" Under Sec. 98 of Cha. 37 it must pay the tuition of any student desiring to go to the Academy."

I agree. . . In the amendment to Section 98, contained in P. L. 1945, Chapter 270, the words "high school funds of the town" were stricken out and the words "secondary school fund of the town of academy" were written in, so that under Section 98 as amended the city must pay the tuition of any student desiring to go to Thornton Academy.

In view of the fact that we do not fully agree upon the answers to the questions which you propounded, I do not think that is important under the present state of facts, because I agree with you that no contract can be forced upon the trustees of the Academy by the City of Saco, and at the present time you have no contract. The trustees do not propose to make a contract unless that contract carries a provision waiving the right of the city to request a joint committee. Inasmuch as I feel that the city has no right to waive its right to request a joint committee, you will have to operate, as I said before, without a contract.

I think your point is well taken, where you have fifteen trustees and only three would represent the board of trustees, if a joint committee were formed.

I have already advised the city solicitor that any action of the city council upon requesting a joint committee would be premature, where there is no contract between the city and the Academy.

Ralph W. Farris
Attorney General

RWF:c