

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

Therefore my opinion in this matter follows the language of the Supreme Court, and former employees of the E. R. A. would not be considered as State employees.

RALPH W. FARRIS
Attorney General

March 30, 1948

To H. H. Harris, Controller
Re: Council Order #76, March 3, 1948

With reference to Council Order #76 of March 3, 1948, by which \$10,000 is made available to the Department of Education for repairs and improvements in the dormitory and classroom facilities at Madawaska Training School, Fort Kent, and by which the Commissioner of Education is authorized to employ one John Cyr of Fort Kent to perform the work on a "day-labor basis":

At the time when this Council Order was passed, the Governor and Council had before them facts which showed that it was impracticable to let out this work on competitive bidding. In the first place there were no contractors in that area and therefore you could not have competition in bidding. Also there was the fact that the nature of the work was such that it would be difficult to prepare plans and specifications to be submitted for competitive bidding, as the extent and the time to be consumed in doing this work would develop as the repairs were undertaken.

The Governor and Council also considered the representation that the cost of the work would be greatly increased by submitting it to competitive bidding, since the contractors would be obliged to travel some distance from where they are located, and likewise their employees would have to travel from their homes and take up quarters at Fort Kent for room and board during the progress of the work.

In view of these circumstances, the Governor and Council determined, as their order indicates, that these repairs and improvements should be done on a day-labor basis.

I think that this order falls within the spirit of Chapter 14, Sections 43 et sequitur, and is not in conflict with the law.

ABRAHAM BREITBARD
Deputy Attorney General

March 30, 1948

To Ernest H. Johnson, State Assessor
Re: Revised Statutes, Chapter 142, Section 15

In your memo of March 18th you ask whether, under the authority granted by Chapter 142, Section 15, permitting the State Tax Assessor to extend the time of payment of the inheritance tax, you can grant an extension with conditions as to the payment of interest during the time of the extension, to compensate the State for non-use of the money.

I have talked this matter over with the State Auditor, and I am of the opinion that under the statutory authority you have a right to grant extensions of the tax payment upon terms, if you so desire, as there are many estates where the tax due the State cannot be computed, owing to conditions in the wills of the deceased persons. Where it is needful and necessary to grant lengthy extensions, I believe that you have the authority under that statute to compromise on the interest.

It is my opinion that, when the legislature granted the State Tax Assessor this power, it included the authority to act within that power in protecting the State's financial interests; as the statute authorizes the Assessor to extend the time of payment without charging interest, it would naturally follow that he may extend the time of payments upon terms that would bring in a revenue to the State which it would otherwise lose, if it did not have this authority.

A high rate of interest is in the nature of a penalty for not paying the tax and can be exacted only when the taxpayer is at fault, does not pay as required by statute, and has not received an extension from the State Tax Assessor. A compromise on the interest would not be in the nature of a penalty, but in the nature of a revenue to the State, and should be considered on a business basis and not on a penalty basis.

RALPH W. FARRIS
Attorney General

March 31, 1948

To E. E. Roderick, Deputy Commissioner of Education

I have your memo of March 31st, requesting an interpretation of the phrase used in the act to incorporate a town school district without the emergency preamble, particularly that section which refers to the effective date of the act, which reads in part: "not later than 1 year after the approval of the act."

You state that your office has been requested to secure a legal interpretation of the term "approval of the act," and you ask, "Must the time be reckoned from approval of the act by the Governor, or the effective date of the act without the emergency preamble, which means ninety days subsequent to the adjournment of the legislature which enacted this law?"

In my opinion the words "not later than 1 year after the approval of the act," mean one year after the approval of the act by the Governor, because there is no constitutional or statutory approval by the legislature, as the legislature is the enacting body and the Chief Executive has the duty of approving the act.

I feel that we should take the act as it reads. It would be dangerous to try to interpret it as to the effective date of the act, especially as there are several other school district charters which use the word "approval" instead of "effective date."

RALPH W. FARRIS
Attorney General