

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

April 12, 1948

To E. E. Roderick, Deputy Commissioner of Education

Re: Interpretation of the legality, involving the approval of the Act, Chapter 102, P. & S. L. 1947, relating to the School District of the Town of New Gloucester

I have your memo of April 12th, stating that the superintending school committee of New Gloucester request an opinion as to whether or not, the town once having approved Chapter 102, P. & S. L. 1947, at its annual meeting, it is possible to rescind the action taken, either to nullify the provisions of this act or to require that the act be carried out. You state that the article in the warrant reads:

“To see whether or not the inhabitants of the town (New Gloucester) will vote to reconsider the vote taken at the annual meeting of the town last held accepting the act to incorporate the Town of New Gloucester School District.”

It is my opinion that this act took effect when approved by the majority vote of the legal voters of the district present and voting at the annual town meeting of the Town of New Gloucester, and that the article in the warrant for a special town meeting, which you cite in your memo, would have no effect upon the effective date of the act, for the reason that the mandate of the legislature has been complied with, and once the act was approved, it took effect on the date of the annual town meeting.

You state that some of the inhabitants of the town maintain that it is permissible to take action to nullify what has already been enacted by the legislature and favorably acted upon by the town.

In order to settle this question, those who contend that the act is not effective must resort to the courts.

RALPH W. FARRIS
Attorney General

April 13, 1948

To Hon. Horace Hildreth, Governor of Maine

Re: Trustees—University of Maine

With reference to letter of April 6th of Edward E. Chase, President of the Board of Trustees of the University of Maine, to you, concerning one of the trustees whose term expires on May 9th, the question is whether he holds over after the expiration of his term until the appointment and qualification of another or until he is reappointed and qualified.

It is the opinion of this department that, in all cases where the term of the trustee expires, he holds over until the appointment and qualification of a trustee in his place and stead, or until the same person is reappointed and qualified.

In this respect the rule with regard to holding over differs from the case of a trustee who has attained the age of seventy years, although the term for which he was appointed has not expired.

The rule in that case is governed by Section 4 of Chapter 532 of the Private and Special Laws of 1865, creating the University, which provides:

“No person shall be a trustee who is not an inhabitant of this State, nor anyone who has reached the age of 70 years.”

In such a case the department ruled that the office becomes vacant when the trustee reaches seventy years of age, by reason of the provisions of the section of the charter quoted.

ABRAHAM BREITBARD
Deputy Attorney General

April 20, 1948

To Earle R. Hayes, Secretary, Employees' Retirement System

In your memo of April 6th, which reached this office on the 8th, you requested an opinion as to whether or not the provisions of Section 9 of Chapter 384, P. L. 1947, namely, “otherwise to his estate,” may be interpreted to mean that you can pay such funds of a deceased member to the duly appointed administrator or personal representative, or whether checks should be drawn to “the estate.”

Checks should be drawn to the administrator or executor, whichever the case may be. If there is no administrator or executor qualified and there are heirs, the check could be made payable to the heirs, if they would all sign a release and file a bond to hold the State harmless from any liability for payment of such funds to the legal heirs of the deceased.

Checks made payable to the estate of any person cannot be cashed unless signed by a duly appointed representative of the deceased.

RALPH W. FARRIS
Attorney General

April 26, 1948

To H. A. Ladd, Commissioner of Education

I have your memo of April 12th about which I conferred with Mr. Roderick on April 23rd and which concerns the arrangements for raising funds to construct a new school gymnasium in Island Falls. You state that a woman has promised to raise \$10,000 from individual givers if the town will match the sum. As you understand it, the town has not raised its share, but there seems to be a general agreement among the voters that they should fulfill their part, if this lady can produce \$10,000 as promised.

You state further that since the town meeting she has purchased a new Plymouth car and presently plans to sell tickets and give the car to a lucky winner. You advised them to go slowly on this matter, as you feel that the proposal is outside the pale of law, and you agreed to confer with my office in regard to this matter. In this connection you asked the following questions:

“(1) Is action of this sort permissible?”

Answer. No, it is not permissible.