

MAINE STATE LEGISLATURE

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STATE OF MAINE

R E P O R T

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

In *State v. Wallace*, 102 Maine 229, the court referred to the Revised Statutes of 1903, Chapter 41, whereby the power of regulating clam digging within their respective limits was remitted to the towns. Towns were to vote, and the municipal officers were to grant permits; but a preference for the use of the inhabitants of the town is still shown, except when the town fails to take action, in which case there is free fishing for everyone, unless there is another State statute regulating same, or the Commissioner of Sea and Shore Fisheries has been authorized by statute to promulgate a rule and regulation respecting the digging of clams in the flats of navigable waters.

Our courts have held that . . . legislation carrying out a public purpose, though limited in its application, if within the sphere of its operations it affects alike all persons similarly situated, is not within the Fourteenth Amendment of the Constitution, which declares that no State shall deny to any person within its jurisdiction the equal protection of its laws.

RALPH W. FARRIS
Attorney General

March 11, 1949

To Edward L. McMonagle, Director, Schools in Unorganized Territory
Re: School Residence

I have your memo of February 10th which I acknowledged on February 25th. Supplementing said February 25th memo, I will say that I have received a statement of facts from the attorney of the Town of Stockholm on the question of whether Albert L. Anderson is a resident of Township 16, Range 4, or a resident of Stockholm. You stated in your memo that Mr. Anderson moved his family to a farm which he owned in Township 16, Range, 4, W.E.L.S., intending to rebuild his home in Stockholm as soon as possible. However, the facts which the Town of Stockholm submits indicate that he did not own the farm in T. 16, R. 4, at the time of the fire which destroyed his home in Stockholm in 1947. On October 10, 1947, Albert L. Anderson and his wife, Elsie Anderson, purchased the farm in T. 16, (R.) 4, and they are making that their permanent home, regardless of what he intends to do in the future. Having lived there long enough to establish a residence, and inasmuch as that is his domicile and the domicile of his wife and family, and his family consists of children of school age, I am constrained to rule that he is now a resident of T. 16, R. 4, where he resides and owns his home.

The facts relating to his paying a property tax and purchasing hunting and fishing licenses and being a member of the superintending school committee have no bearing upon his residence. A man's residence is based upon what he does and not upon what he intends to do.

Upon this basis I must answer your questions as follows: Albert Anderson cannot claim a residence in Stockholm for school purposes while he and his wife and children are not residing in that town; and, based upon the facts and circumstances that he and his wife are residents of T. 16, R. 4, your department through the Division of Unorganized Territory, is responsible for the schooling of the Anderson children.

If Mr. Albert Anderson wishes to re-establish his residence in Stockholm, he must rebuild there and move his family, personal effects and furniture to the new home in Stockholm and live there the required number of months to obtain a new residence in Stockholm. He forfeited his residence in Stockholm when he purchased property and settled in T. 16, R. 4, even though sometime in the future he may intend to rebuild. As pointed out in the statement of the attorney for the Town of Stockholm, he may never rebuild on his lot in Stockholm. In other words, residence must be determined upon acts rather than upon intentions.

RALPH W. FARRIS
Attorney General

March 15, 1949

To Frank S. Carpenter, Treasurer of State
Re: Chapman Town Orders to School Teachers

Your memo of March 14th received, stating that some time between 1933 and 1938 the Town of Chapman issued its town orders to certain teachers in payment for their services. The teachers in turn gave the town orders to the Presque Isle Normal School for the payment of their tuition and other expenses while attending the summer session of the school. You further state in your memo that these town orders were held by the school officials and as nearly as can be learned, are still being held by them.

You further state that in August, 1941, the buildings constituting the home of Harley D. Welch, first selectman of Chapman, were destroyed by fire with all the records of the town contained therein. However, the town continued to honor all town orders presented to it for payment, although it had no record of same, until January, 1945, when the town officials issued a statement which was advertised in the local papers, whereby the selectmen notified all holders of town orders issued by the Town of Chapman to present them to the town for payment before February 25, 1945; any town orders presented after that date would not be honored.

You further state that the town orders held by the Presque Isle Normal School were not presented for payment at that time and are still held by the school.

You further state that it appears that some time ago Mr. Kenney of the Department of Education made a record of all receivables due the Department of Education and its associated schools, and he found that these town accounts, amounting to \$233.83, of the Presque Isle Normal School were set up on the school's books as an account receivable from the Town of Chapman. There followed some correspondence between the Treasurer's Office and the Department of Education, but the orders were never presented to the Town of Chapman and were never presented to the State Treasurer for collection. On December 7, 1948, the amount of \$233.83, representing the town orders aforesaid, was deducted from certain school funds being credited to the Town of Chapman against their account for State tax for the year 1948; and you attached to your memo of the 14th a letter received in the office of the State Treasurer signed by Harley D. Welch, first selectman of Chapman, who objects in behalf of the town to this deduction of \$233.83, claiming that this is no longer an obligation of the town of Chapman.