

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

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.

Based upon the foregoing statement of fact you ask the following question: "Are these town orders an obligation of the town of Chapman at this time and is the account represented by them collectible by the state?"

It is well settled law that an order against a town is not due until it is presented for payment, unless it is otherwise agreed. This rule is independent of any statutory requirement, and it is based on the consideration that it would be inconvenient and burdensome for the officials of a town to seek its creditors and tender payment of their claims, and also that it would be oppressive and unjust to permit creditors of a municipality to turn claims into investments through omitting to present them to the town for payment.

This is a claim of several teachers in their private capacity as employees of the town, who have attempted to negotiate town orders given them in payment for their services. The town orders, according to your memorandum, were never legally presented to the town for payment by the holder of same, which was the Presque Isle Normal School, within the time prescribed by the Inhabitants of the Town of Chapman through their municipal officers. Towns in Aroostook County are generally small in territory and the inhabitants comparatively few in number, and their municipal officers are elected annually. In 1945 the Inhabitants of the Town of Chapman apparently made provision for payment of all outstanding town orders and so notified all the inhabitants of Chapman and surrounding towns by publication in the Presque Isle Star Herald. The Presque Isle Normal School is located in Presque Isle, where this publication is printed and issued. There is no reason why the officers of an educational State agency should not be held to the same degree of diligence in presenting claims which they hold against a town, especially old claims of this nature, as the teachers themselves.

It is my opinion that these town orders held by the Presque Isle Normal School were not presented for payment within six years after they were negotiated and were therefore not deductible from the school fund being credited to the Town of Chapman against their account for State tax for 1948, and the Town of Chapman should be reimbursed for the amount deducted; and that the town orders should be put back on the accounts receivable of the Presque Isle Normal School and charged off by the school officials.

RALPH W. FARRIS
Attorney General

March 18, 1949

To Francis G. Buzzell, Chief, Division of Animal Industry
Re: Bang's Disease

Your inquiry in regard to Bang's disease received in which you ask if the head of the Division of Animal Industry has the authority to take and dispose of positive animals reacting to the Bang's test, and whether the rules and regulations set up by the department in this regard can be enforced in court.

Section 52 of Chapter 27 of the Revised Statutes, as amended by Chapter 275 of the Public Laws of 1945, provides: "The commissioner shall cause investigation to be made as to the existence of tuberculosis, Bang's disease. . .