STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

October 10, 1949

To Ernest H. Johnson, State Tax Assessor
Re: Dresser Schoolhouse and Lot in Albany Township

I have your memo of October 4th, stating that on April 6, 1884, Washington French conveyed a schoolhouse and lot to the inhabitants of School District #2 in Albany, by deed recorded in Book 310, page 227. You further call my attention to an Act of 1893, Chapter 216 of the Public Laws, which provided that all existing school districts were abolished and the towns were given possession of such school property. You further state that as of January 1, 1938, the town of Albany was deorganized. On August 10, 1949, the Commissioner of Education notified the State Tax Assessor of permission to dispose of this property under the provisions of Chapter 90, Section 13, R. S., as amended; but meanwhile, on May 15, 1949, four individuals purporting to be "inhabitants of District No. (2) in Albany" attempted to convey the above schoolhouse and lot to J. Ernest Brown, an inhabitant of said school district. You further state that the purchaser was notified by your office on July 1, 1949, that the above property was state-owned, but that no reply was received to this letter.

Based upon the foregoing statement of facts and the law, you ask the following question:

"Did the grantee in the above deed acquire any interest in this property by virtue of the deed given on May 15, 1949?"

It is my opinion that after the effective date of Chapter 216, P. L. 1893, abolishing all school districts, the property was no longer in the possession of the school district, but became the property of the town, and the State Tax Assessor is authorized to sell or otherwise dispose of said property, and the grantee in the above deed did not acquire any interest or title in this property by virtue of any deed given on May 15, 1949 by individuals purporting to be inhabitants of the school district, because there was no such school district in existence at the time of the execution of said deed, the same having been abolished by said statute of 1893.

RALPH W. FARRIS
Attorney General

October 12, 1949

To Paul A. MacDonald, Deputy Secretary of State
Re: An Act to Incorporate the Skowhegan School District,
Ch. 170, P&SL 1949

In your memorandum of October 12, 1949, you detail the legislative history from the time the above-referred to Act was referred to the Legal Affairs Committee of the 94th Legislature until its final passage by the respective branches of that Legislature and its signature by the Governor of the State. Because of the necessary length of your statement of facts the same is not repeated herein, but it should be considered as incorporated herein by reference.

In brief, it appears that the original Act provided in the referendum clause that the referendum by the people should be held at a special town meeting, to be held "not later than 3 months after the effective date of this act," and that an amendment to the referendum section provided that the referendum should be held at "the next annual town meeting" of the town of Skowhegan. It appears that the proposed amendment failed of passage in the House, but that, due to errors as recited in your statement of facts, the bill as finally enacted and as signed by the Speaker of the House on May 4th, and enacted and as signed by the President of the Senate on May 5th and approved by the Governor on May 6th, contained the referendum clause as proposed by the defeated amendment and not the referendum clause as provided in the original bill.

The question under these circumstances is whether the bill as finally enacted is the law, or whether, due to the error, the bill as it should have been engrossed is the law.

The courts of this country have divided in passing upon questions of this kind between adopting and adhering to two widely differing but nevertheless clearly defined rules of law. In some jurisdictions it is held, under the so-called "journal entry rule," that courts shall have recourse to the record of the legislature to ascertain whether the law has in fact been passed in accordance with Constitutional requirements. (49 Am. Jur., 255; 50 Am. Jur., 123.) In other jurisdictions it is held, under the "enrolled bill rule," that courts may not resort to the legislative record in cases of alleged discrepancy between a bill as finally enacted and the record which may show a contrary intent. (49 Am. Jur., 255; 50 Am. Jur., 123.)

In England it has uniformly been held that the enrolled bill is conclusive and that the courts cannot go beyond it for the purpose of examining the passage of a law or the contents in cases of alleged discrepancies. (50 Am. Jur., 129.) In the same reference the following is stated:

> "Similarly, in the United States according to one line of cases, the enrolled bill imports absolute verity, and the courts will not look beyond it to ascertain whether it has been regularly enacted, or the terms of the statute in cases of alleged discrepancies."

It would appear, then, that the answer to your question should be found in the decisions of the Supreme Judicial Court of Maine, if that Court has been called upon to pass upon the question, it being clear that if called upon, it would announce which of the two rules is to be followed in Maine. It appears that the Supreme Judicial Court of Maine has passed upon the exact question presented in the case of *Weeks v. Smith et al.*, reported in 81 Maine, beginning at page 538. In this case, on page 547, the Court states as follows:

> "But when the original act, duly certified by the presiding officer of each house to have been properly passed, and approved by the governor, showing upon its face no irregularities or violation of constitutional methods, is found deposited in the secretary's office, it is the highest evidence of the legislative will, and must be considered as absolute verity, and cannot be impeached by any irregularity touching its passage shown by the journal of either house."*

*Adhered to, 104 Maine, p. 23.

Accordingly, since Chapter 170 of the Private and Special Laws of 1949 shows upon its face no irregularities or violation of constitutional methods, since it was found deposited in the Secretary of State's office as required by law, since it was duly certified by the presiding officer of each House to have been properly passed, and since it was approved by the Governor, this law cannot be impeached by any irregularity touching its passage shown by the journal of either House.

JOHN S. S. FESSENDEN
Deputy Attorney General

October 13, 1949

To Col. Francis J. McCabe, Chief, Maine State Police
Re: General Investigative Activities of the State Police

In reply to your inquiry of October 13, 1949, wherein you request an opinion from this office as to the authority or availability of the State Police to investigate the administrative organization of personnel membership of a municipal police force, you are advised that a careful review of Chapter 13 of the Revised Statutes of 1944, being the chapter entitled "State Police" and the source of authority for the State Police, reflects that the State Police has neither the duty nor the right to undertake an investigation of this character.

This opinion should not be construed to mean that in the case of any specific criminal violation of law by a police officer employed by a municipality, the State Police should not perform their duty as in all other criminal cases. The opinion applies only to an investigation of a general nature of a municipal police organization.

I should also point out that I know of no appropriation available to the State Police as a source of funds for this purpose and would be extremely doubtful as to whether the Chief would be authorized to defray the salary or expenses of any man assigned to such work, in the absence of an appropriation.

JOHN S. S. FESSENDEN
Deputy Attorney General

October 31, 1949

To E. L. Newdick, Director Plant Industry, Agriculture
Re: Soil Conservation

In reply to your letter of October 12, 1949, relative to Section 10 of Chapter 29, R. S. 1944, you are advised that we have studied said Chapter 29 and have the following opinion:

Chapter 29, entitled, "Soil Conservation Districts," established a Soil Conservation Committee which handles the over-all administration at the State level of the soil conservation program enacted by the legislature. Within this over-all program provision is made for the creation of Soil Conservation Districts. The method of organization, the powers of the districts, and of the supervisors thereof, clearly indicate that the districts themselves are not functionally a part of the State government as such, but are to carry out