

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

R E P O R T

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

family he assumes new obligations and duties. When these new obligations and duties conflict with former ties, they must, in the interests of society and the family relation, be paramount. In other words, legal rights between husband and wife are superior to those between parent and child. Therefore it is my opinion that the marriage of Holden Turner emancipated him from his parents and that if he has resided in Mount Vernon since his marriage when he was 19 years of age, his legal settlement would be Mount Vernon, as that would mean that he had resided there for more than six years and had raised a family. This is a question of fact. Our court held in *Lowell v. Newport*, 66 Me. 78, that emancipation may be by marriage, death, misfortune or agreement.

RALPH W. FARRIS
Attorney General

February 2, 1950

To Raymond C. Mudge, Commissioner of Finance
Re: Board of Elevator Rules and Regulations

I have your memo of January 26th asking if the last paragraph of Section 99-K of Chapter 374, P. L. 1949, relating to the inspection of elevators, allows the Commissioner of Labor to expend in excess of the revenue dedicated to this purpose, or must this activity operate within the limits of the amounts collected as specified in this chapter?

In reply I will state that it is my opinion that it was the intent of the legislature that the expenses incurred under the provisions of this section should be paid from the revenue derived from fees, as the legislature appropriated all fees for this purpose.

RALPH W. FARRIS
Attorney General

February 3, 1950

To Harland A. Ladd, Commissioner of Education
Re: Liability in case of school accident

I have your memo of February 2nd relating to liability in case of school accident.

I gave a memo to H. V. Gilson, then Commissioner, on October 16, 1946, on the liability of teachers and school board members in case of death or injury of pupils. If you have not a copy of that memo in your file, I will furnish one from this office.

I call your attention to the case of *Brooks vs. Jacobs*, 139 Maine 371, decided April 2, 1943, in which the Court held that the relationship of teachers to their pupils is in the nature of *in loco parentis*, as the teacher is the substitute of the parent. Therefore if a pupil is injured in school and the teacher is negligent in securing emergency treatment, causing further injury or death to the pupil, that teacher might be held liable, depending on the circumstances of the case.

In the case of an emergency where the pupil is injured and the teacher calls a hospital and has the pupil taken there, the parents of the child are

liable for the care at the hospital and not the teacher; but in cases of accidents that are not serious, like a child's falling outside on the snow or ice, the teacher should always get in touch with the parents before hospitalizing the child, and then there would be no question as to who was responsible for the hospital expenses.

It is not practical for teachers or school nurses to take pupils to hospitals without the consent of the parents. That should be done only in cases of emergency, where a life may be saved or further injury averted.

RALPH W. FARRIS
Attorney General

February 6, 1950

To Marion E. Martin, Commissioner of Labor and Industry
Re: Vacation Pay for Certain Employees

I trust you will excuse the delay in answering your memorandum on the above subject; but since its receipt this office has been intensely busy and Mr. Farris or myself has been called out of the office on official business on a number of occasions, so that the work has been more than one man can do.

Your memorandum raises questions to which the State has an administrative or executive agency, if not a real party in interest. Contract rights between individuals, whether the contract is by the individual personally or by virtue of his membership in an organization authorized to make a contract for him, will be determined by judicial procedures applicable to civil matters. What the particular obligations may be under the terms of any given contract is a matter for judicial construction or for arbitration by agreement between the parties.

There is no State law requiring a company under the terms of a union contract to pay an employee for his vacation, if he is laid off before he takes the vacation. It may well be that under the terms of the contract or by custom and usage the employee is entitled to the pay. The answer to the question is entirely within the terms of the contract, and not a matter of State law.

JOHN S. S. FESSENDEN
Deputy Attorney General

February 7, 1950

To H. A. Ladd, Commissioner
Re: Vacancies in Superintending School Committees

You wrote me on February 3d, stating that a situation has arisen concerning which you desire advice.

A member of a superintending school committee has been committed to the Augusta State Hospital; he has not resigned from the committee. You request me to give you an opinion as to whether the 90-day provision in Section 42, Chapter 37, R. S. 1944, applies under these circumstances.

It is my opinion that when a member of the superintending school committee is absent for more than ninety days, a vacancy shall be declared under the statute.

RALPH W. FARRIS
Attorney General