

# 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**

to the installation, construction, etc., of elevators, and that the question has come up whether the Board has any jurisdiction over the construction of shaftways with respect to fire resistance, and you state that you can find nothing in your law covering this.

It is my opinion that your Board has powers and duties only in regard to the construction and installation of elevators and not in regard to anything that comes under the building codes, which in cities are a local matter, while towns have building inspectors. The shaftways would be under the control of the building inspectors, as they are part of the construction of the building, and only when it comes to installing the elevator in the shaftway would you have something to say as to whether or not the construction was safe for the installation of the elevator. Until such time as the construction and installation of an elevator is brought to your attention, you have no authority to interfere with the building committee or the architects in charge of the construction of the building.

RALPH W. FARRIS  
Attorney General

May 23, 1950

To Philip A. Annas, Department of Education  
Re: Tuition Liability, §§98 and 99, Laws Relating to Public Schools

As I understand your question of May 3, 1950, relative to two students whose parents live in the town of New Sharon and who are attending high school at Farmington under the provisions of Sections 98 and 99, I must assume that all the applicable provisions of both sections have been complied with except that the superintending school committee of the town of New Sharon have not approved the qualifications of the two students for occupational training, so that the narrow question of law is whether or not the approval by the superintending school committee of the qualifications of the students is a condition precedent to the right of the Commissioner to pay the appropriate amount of tuition to the receiving town and to charge the same against the apportionment fund of the sending town. You state in your question that the New Sharon school committee refuses to act on the qualifications of the students; but I notice in the correspondence which accompanied your question that it simply states that the superintending school committee of New Sharon voted not to approve payment of tuition. This may, of course, imply that they refused to pass upon the qualifications; but it does not directly so state. The clause, "whose qualifications for such training are approved by the superintending school committee of the town," as it appears in the first paragraph of Section 98, obviously was intended to give the superintending school committee of the sending town some control over the student, so that students could not willingly attend any school of their own choice at the expense of their home towns. Certainly, to this extent, this approval is a condition precedent to a youth's election to attend some other approved secondary school.

It is not the province of this office to advise any citizen as to his rights to compel action by any town officials who refuse or who fail to act within the scope of their duties. In such matters, private citizens should seek advice from their own counsel.

We therefore confine ourselves to that which is within the scope of our duties, namely, advising your department as to your authority within the provisions of paragraph 3 of Section 99 relative to the payment of tuition to the receiving town when the sending town has failed to pay.

This situation never having been construed by a court, we have no precedent to follow. While the approval of the superintending school committee of the sending town may be a condition precedent to a youth's right to elect to attend some other approved secondary school, the balance of Section 98 is in mandatory terms, indicating that a youth meeting the standards set forth as qualifying him has an absolute right to free tuition. As I understand it, you have ample evidence to establish that the students involved in this case are clearly within the statutory standards in all respects save the qualification by their own superintending school committee. Clearly, if the superintending school committee of the town disapproved the qualifications of the students and they nevertheless attended another school, you would have no authority under the provisions of Section 99 to pay the tuition to the receiving town. It also clearly follows that if the superintending school committee does approve the qualifications and the town thereafter fails to pay the tuition to the receiving town, your authority is plain under Section 99 to pay the appropriate tuition to the receiving town and to charge the same against the sending town's apportionment. When no action whatsoever is taken, although the same has been requested, your position under Section 99 is not clear, so that we are unable to state with any authority what your legal duty is under the circumstances. You, as administrator, have it within your power to take the position that the approval of qualifications by the sending town's school committee is a condition precedent to the coming into play of the balance of the statutes, including any obligation for the sending town to pay tuition to the receiving town and the subsequent arising on your part of any obligation to see that payment is made at the State level. On the other hand, you, as administrator, also have it within your power to take the position that since there is ample evidence that the students do qualify in all respects to elect to attend another approved secondary school; since the New Sharon High School does not offer two approved occupational courses of study; since the Farmington High School does offer not less than two approved occupational courses of study; since the parents or guardians of the students had requested the approval of the superintending school committee of the Town of New Sharon; since the school committee had failed to pass upon the qualifications as required by statute; these facts warrant your office in proceeding under the third paragraph of Section 99 to adjust the tuition between the two towns as provided by law. In either event this office would be prepared to defend the legality of your action.

JOHN S. S. FESSENDEN  
Deputy Attorney General