

# 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**

September 5, 1950

To Ermo H. Scott, Deputy Commissioner of Education

Re: Liability of instructors at the Teachers Colleges and Normal Schools  
and of teachers employed under the Division of Unorganized Townships  
and Plantations

In reply to your memorandum of August 25, 1950, relative to the above subject you are advised that there is nothing that I can add to the paper which I delivered in 1949 to the State Convention of Superintendents on the subject of the liability of teachers for injuries to pupils. All I can do is to refer you to the case which I there analyzed, namely that of *Brooks v. Jacobs*, appearing in 139 Maine at page 371, particularly to these words appearing at the top of page 380:

“We believe that when one accepts responsibility of due care towards those under his direction and control he must exercise that care not only as to what he himself actually does in its observance but as to what he fails to do, which in the exercise of due care he should have done.”

I would also call your attention to the principles stated on page 381, which I will paraphrase as follows:

The teacher would be liable for any act of negligence proximately causing injury to a pupil under his supervision or control, whether his negligence was due to an affirmative act upon his, the teacher's, part, or a failure by the teacher to do that which a reasonably prudent person would have done under like circumstances.

JOHN S. S. FESSENDEN  
Deputy Attorney General

September 6, 1950

To Harland A. Ladd, Commissioner of Education

Re: Berry Library in Buxton

I herewith enclose a copy of a letter which I this day addressed to George Jack, superintendent of schools in the union of which the Town of Buxton is part.

It seems to me that if it is necessary for the town to use the public library for school purposes, an agreement should be worked out between the citizens, provided this is a temporary arrangement.

If all the citizens agree to use the library, without complaint, no action on this matter will be taken by my department.

I presume this move to use the library for school purposes has been voted on by the town. However, the town has no right to divert trust funds for any purpose other than those for which the town accepted the gift under the will, without first going to the court and asking for construction of that clause of the will making the bequest and devise.

RALPH W. FARRIS  
Attorney General