

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

November 9, 1950

To Howard L. Bowen, Associate Deputy Commissioner of Education
Re: Procedure to be followed when a child is taken from a school

In your memorandum of November 7, 1950, you state that the department is in receipt of a letter from the Rockland school committee in which inquiry is to be made as to the procedure to be followed when a child is taken from a school. This inquiry arises from conflicting opinions in the City of Rockland as to the procedure to be followed when the police and authorities desire to take a child from school for questioning. You state in substance that it is the opinion of the superintending school committee that the child's parents should be notified and that it is the opinion either of the police or of the city council that the child's parents should not be notified. The Attorney General is requested to render his opinion in order to resolve the issue.

You are advised that the Attorney General has neither the right nor the duty by statute or otherwise to act as an arbiter with respect to local matters. The situation presented by your memorandum is entirely a local matter involving local procedure to be followed in the conduct of local affairs, namely, the administration of the school department and the administration of the law enforcement agency. In view of this situation, in all fairness to all parties concerned, the Attorney General cannot and should not give any opinion, since any opinion expressed would carry no official weight whatsoever.

I might point out, in the event that the point has been overlooked, that the Supreme Judicial Court of Maine has held that the relationship between a teacher and a pupil is known at law as that of "in loco parentis." Since the court has so held, it follows that the teacher standing in the place of the parent should act accordingly.

JOHN S. S. FESSENDEN
Deputy Attorney General

November 6, 1950

To Harland A. Ladd, Commissioner of Education
Re: Section 165 of Chapter 37 with respect to Academies, when read in conjunction with Section 201 of Chapter 37, both sections as amended.

In your memorandum of November 3, 1950, you inquire as to the amount of the allocation per teaching position to be made to Traip Academy in Kittery, Maine, pursuant to the provisions of Section 165 of Chapter 37, R. S. 1944, as amended. You state that the department, in its administrative policy, believes that under the provisions of this section \$600 is the amount to which an academy is entitled and that in this particular case Traip Academy claims that it should receive the amount of \$850, that being the amount of the allocation that would be made per position to the Town of Kittery.

The entitlement of an academy to any allocation at all, within the limits of the question asked by you depends strictly upon the provisions of Section 154, which places academies on an equal footing with schools with respect to instruction in agriculture, industrial arts, or home economics. The maxi-

imum limit in Section 165 is \$600, provided that sum is greater than the amount to be allocated under the provisions of Section 201, Chapter 37, R. S. 1944, as amended. Subsection II of Section 201 provides for a sum of \$400 to \$450 for teaching positions when certain standards are met and in addition thereto provides for towns an increased amount in units of \$90 each "based on the effort made by the town to support its school program as determined by the school tax rate."

It is the opinion of this office that this feature of the statute, being an incentive feature, applies only to public schools and not to academies which happen to be located within the limits of any given town. Presumably, the students in attendance at any particular academy may come from various and sundry towns, so that any incentive formula to be applied to the academy would of necessity have to be worked out separately for each town with which the academy had a contract to receive students. It does not seem to us that this complication is within the contemplation of the statute as it now reads and we are therefore of the opinion that in applying the above cited sections of the statute the maximum limit to be allocated to an academy would be \$600.

JOHN S. S. FESSENDEN
Deputy Attorney General

November 9, 1950

To Harold J. Dyer, Director of State Parks
Re: Deed

I am returning herewith the sample deed which you transmitted to this office, which deed, if executed, would run from the City of Presque Isle to the Maine State Park Commission, purporting to cover land which would become a part of Aroostook State Park.

When, as, and if any such deed is executed by the City of Presque Isle, this office would probably be disposed to approve the same as to form for the purpose of its reception by any State Department or agency, since the proposed deed is the standard form of municipal quitclaim deed commonly known as a tax deed.

The approval of this office as to form, however, must not be construed to mean that we in any way approve the title or the adequacy of the description of the property involved, or the adequacy of the votes taken by the municipality to make the conveyance, or the propriety of the State Park Commission's accepting the same. Such approval as to form also should not be construed as expressing the approval of this office as to the validity of a municipality's making a gift to a State agency of property taken for taxes in lieu of selling the same for taxes.

JOHN S. S. FESSENDEN
Deputy Attorney General