

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

There is a provision in the same section of law for acceptance of these items by gift, should they be offered by the Federal Government or by any person, firm, or corporation.

NEAL A. DONAHUE
Assistant Attorney General

March 12, 1951

To H. H. Chenevert, Milk Commission
Re: Hearings

. . . As you know, the Milk Commission Law contemplates that the Commission shall act on the basis of evidence obtained at public hearings and after investigations. While the law does not specifically so state, it is believed that, if the Commission is acting upon investigational material, such material, as a matter of public policy, should be made public at a public hearing, so that persons interested will have an opportunity to be heard thereon.

We were informed that in holding hearings it has been the custom, when questions were asked, for the chairman to state that the witness may answer if he chooses. In view of the fact that the Commission has the authority to subpoena witnesses and to examine persons under oath, it appears to this office that an opportunity should be given for cross-examination and that the witness should not be instructed that he may answer if he chooses. A witness, of course, should not be compelled to answer any questions the answer to which might tend to incriminate him; but since the law contemplates that the Commission shall act on evidence it is a basic element of a fair hearing that there be an opportunity to cross-examine. This does not mean that there must be cross-examination, but only that an opportunity be given to interested parties.

JOHN S. S. FESSENDEN
Deputy Attorney General

March 14, 1951

To William O. Bailey, Deputy Commissioner of Education
Re: Approval of Plans for Schoolhouses

. . . Your specific question is whether school district trustees have the authority to select a location and build a schoolhouse without the approval of the superintending school committee of the town.

The statute referred to recites: "A plan for the erection or reconstruction of any schoolhouse voted by a town shall first be approved by the superintending school committee; and in case no special building committee has been chosen by the town, said superintending school committee shall have charge of said erection or reconstruction; provided, however, that they may, if they see fit, delegate said power and duty to the superintendent of schools."

The first part of this sentence is pertinent to the question at hand. A plan for the erection or reconstruction of any schoolhouse voted by a town shall

first be approved by the superintending school committee. A schoolhouse to be erected by a school district in a town comes within the purview of this act. It is a schoolhouse voted by the town and the statute provides that the plan for its erection shall *first* be approved by the superintending school committee.

It is pointed out in the case of *Lunn v. City of Auburn*, 110 Maine 241 at page 245 that not only should the plan be approved by the superintending school committee before such building is erected, but that it should be so approved before having the approval of your department or that of the State Board of Health, and that it is the building approved by the superintending school committee of the town which should have the approval of your department and the Bureau of Health. . .

NEAL A. DONAHUE

Assistant Attorney General

March 16, 1951

To Harold J. Dyer, Director, State Park Commission
Re: Lamoine State Park

In your memorandum of March 13th you say that the question has arisen whether the Commission can dispose of Lamoine State Park and you give some of the history of its acquisition. As you have noted, it was deeded to the State of Maine in 1927 by the United States of America. In that deed the following provision is found:

“This conveyance is made upon the express condition and limitation that the said property hereby conveyed shall be limited to the retention and use for public use and upon cessation of such retention and use shall revert to the United States of America without notice, demand or action brought.”

Because of this condition and limitation the premises may not be conveyed or disposed of by the State Park Commission either with or without the help of the legislature, and any conveyance of the premises would entitle the United States to acquire them at once.

You will note that, while retained by the State, the premises must be used for public purposes. This does not necessarily mean that they shall be used for Park purposes, and it may be that some other use can be found for them which will still be a public use and will be acceptable to the Navy Department from which the premises were acquired. In that manner, with the assistance of the legislature, you may find a proper other use for the premises and so have the Park status thereof terminated.

NEAL A. DONAHUE

Assistant Attorney General

March 27, 1951

To Maine Real Estate Commission
Re: Partnership of Husband and Wife

This office is in receipt of your letter of March 26th, inquiring whether or not it is legal for a man and wife to form a partnership and to operate as such.