

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

for the calendar years  
**1951 - 1954**

State Department of Health and Welfare, the plans as revised or changed must be again submitted to those departments for approval.

Answer to Question 2. When a town votes to accept a school district offered by act of the Legislature, it is taking one step in the direction of building a school house. Other steps are necessary. Trustees must be appointed, who are by the Act authorized to assume duties theretofore performed by the school board, namely, the financing and building of a school building or buildings and their attendant surroundings, procuring approval of the proper State departments, etc. There is no other or further vote of the town needed, after acceptance of the school district Act.

NEAL A. DONAHUE  
Assistant Attorney General

May 11, 1951

To Ernest H. Johnson, State Tax Assessor

Re: Chapter 260, Public Laws of 1951, An Act Relating to Schooling in Unorganized Territory

I reply to your inquiry of May 4 raising the question whether any 1951 tax is assessable under the provisions of this Act.

The bill establishes an Unorganized Territory School Fund for the purpose of schooling children in the unorganized territory of the State. The Fund is to be made up of an annual property tax "assessed upon the property of said unorganized unit by the state tax assessor in accordance with the provisions of section 74-A of chapter 14. . ."

The effective date is stated by Section 3 of the bill which amends Section 148 of Chapter 37: "As soon as practicable after April 1, 1951, and on April 1, annually, thereafter, the total cost of school privileges . . . shall be assessed upon the property of said unorganized unit by the state tax assessor in accordance with the provisions of section 74-A of chapter 14 . . ."

Turning to Section 74-A of Chapter 14 we find a very explicit direction that the State Tax Assessor prepare a list of taxes due from each owner of land and stating the millage rate in determining the proportionate amount of taxes due from such owners. "Such list shall be filed in the office of the state tax assessor on or before the first day of July of each year, and shall be available for public inspection."

The effective date of the Act is, of course, 90 days after the closing of the session of the Legislature. Such date will unquestionably be no earlier than August, 1951. It is therefore impossible to carry out the terms of the bill in 1951 for the reason that it calls for a list to be filed some 45 days before the anticipated effective date. The effective date cannot be anticipated for it is always possible that the Legislature may take amendatory or supplemental action.

The requirement that a list be filed with the State Tax Assessor on or before July 1 is important. Without such list it is impossible for any taxpayer to determine whether he is being equitably billed in comparison with other taxpayers.

It should be noted that the tax statute does not require that any tax be levied for 1951. The requirement is, "As soon as practicable after April 1, 1951, and on April 1, annually, thereafter", which provision can be taken literally to include a 1952 beginning date or any other subsequent date if assessment is not sooner "practicable".

It being impossible to comply with the law by a 1951 assessment, it is my opinion that the first assessment should be in the following year if then "practicable".

BOYD L. BAILEY  
Assistant Attorney General

May 18, 1951

To A. D. Nutting, Forest Commissioner  
Re: Slash

This office is in receipt of a letter dated May 17, 1951, from Fred E. Holt, Supervisor, asking a question with respect to disposal of slash, presumably under the provisions of Chapter 363, P. L. 1949. The question asked is as follows:

"A cutting operation is taking place on property adjoining a group of overnight camps. The slash law specifies removal of slash for a distance of 100 feet from dwellings when such slash constitutes an unusual hazard. We are interested to know if the overnight camps, which are leased to the public for a week or so at a time, constitute a dwelling within the meaning of this slash law."

This office is unable to give a categorical answer or rule of thumb as to what constitutes a dwelling house for all purposes of the law. It should also be understood that in interpreting provisions of the statute, the office is only giving an advisory opinion and is not necessarily stating that which a court would undoubtedly find as a result of litigation.

We are of the opinion that if the overnight cabins referred to constitute permanent structures they might well be held to be dwelling houses within the meaning of Chapter 363, Public Laws of 1949. Any permanent structure designed for the occupancy of human beings would constitute a dwelling house.

May we suggest that if there is any question as to the permanency of the overnight cabins, the department might be well advised to proceed under the provisions of the first section, relative to the leaving of slash within 50 ft. of a right of way, provided the slash is within 50 ft. of a right of way, or under a later provision with respect to leaving slash within 25 ft. of a property line. Ordinarily, overnight cabins are so located that it is believed that either of the other sections might more clearly apply.

JOHN S. S. FESSENDEN  
Deputy Attorney General