

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

collected, but should be construed to mean both fees collected and fees with respect to which credit has been extended.

We again suggest, relative to this matter, that if you desire statutory control on this question, the Director of Legislative Research be requested to draft a statute to take care of the problem.

Question 2. When there is a provision in a charter which conflicts with a public law such as is occasioned in this instance, time of payments to County Treasurer, which of the two takes precedence?

Answer. A general public law takes precedence over a provision of a charter when the two provisions are in conflict.

JAMES G. FROST
Assistant Attorney General

August 21, 1951

To Kenneth B. Burns, Accountant Supervisor, Institutional Service
Re: Encumbrance of Funds

Your memo of August 10, 1951, recites a situation where the Department of Institutional Service, having a surplus of funds before the end of the fiscal year, June 30, 1951, submitted to the Governor and Council a Council Order approving the transfer of \$3500 to the Central Maine Sanatorium and the Governor and Council approved such transfer and ordered that the funds be encumbered for the purpose of repairing certain portions of the Central Maine Sanatorium.

We are of the opinion that, as no contract or purchase order had been placed prior to June 30th, the funds were not properly encumbered, and as a result lapsed into the General Fund under Section 23 of Chapter 14, R. S. 1944.

Relative to this matter we draw your attention to Section 21, Chapter 14, R. S. 1944, in connection with the construction of buildings, highways, and bridges, and note that even for this important construction funds cannot be carried forward to the next fiscal year unless contracts have been let, actually starting the work, during the year for which the appropriation was made.

JAMES G. FROST
Assistant Attorney General

August 27, 1951

To Philip A. Annas, Associate Deputy Commissioner of Education
Re: Tuition Liability

In your memo of July 19, 1951, you recite a situation of a boy whose parents have died, who is living with his sister in the town of Enfield. The Town of Enfield does not support and maintain a standard secondary school and of necessity the boy must attend school in another town. You ask:

"Is the Town of Enfield required to pay tuition for this boy under the provisions of Section 98, Chapter 37, of the Revised Statutes, 1944, as amended?"

It is our opinion that the Town of Enfield is required to pay tuition for this boy's attendance in an approved secondary school.

The first paragraph of Section 98, Chapter 37, R. S. 1944, contains the qualification necessary for a youth to attend a school in a town other than the town in which he resides, and reads as follows:

"Any youth who resides with a parent or guardian in any town which does not support and maintain a standard secondary school may attend any approved secondary school. . ."

The boy here lives not with a *parent* or *guardian*, but rather with a person acting *in loco parentis*.

The words "parent or guardian" are used elsewhere throughout the laws relating to education; thus, Section 39, Chapter 37, R. S. 1944, states:

". . . every person between the ages of 5 and 21 shall have the right to attend the public schools in the town in which his parent or guardian has a legal residence."

Assuming, for the purpose of resolving our problem, that the question is, "May this boy, residing not with a parent or guardian (probate) but with his sister in the Town of Enfield, attend the public schools in the Town of Enfield?" Here, then, arises a problem parallel with the one presented to this office: "May the boy, under Section 98, Chapter 37, R. S. 1944, residing not with a parent or guardian (probate) but with his sister in the Town of Enfield, attend any approved secondary school?"

It has been held that statutes relating to public schools should receive a liberal construction in aid of their dominant purpose, which is universal elementary education.

Following this principle, the courts of the State of Maine have held that the word "guardian", as used in our statutes relating to education, does not necessarily mean "probate guardian" but such person who has the legal custody of and control over the minor and, as a result of this interpretation, a child living not with a parent or a guardian but with a person who stood *in loco parentis* to the child was considered eligible to attend, tuition free, the schools of the town in which the person having custody resided.

In other words, a person who stands toward a child *in loco parentis* is, under our statutes relating to education, in the same position as a guardian.

In the problem presented to this office, the parents of the boy being deceased, the boy living with a sister, that sister stands *in loco parentis*. She is also in the position of being subject to a penalty under Section 83, Chapter 37, R. S. 1944, if she neglects her duty of causing the boy to attend school.

The court having determined that, for the purpose of these statutes, the word guardian includes the status of one standing *in loco parentis* to a child, it is our opinion that this boy qualifies under Section 98, Chapter 37, R. S. 1944, for attendance in any approved secondary school outside the Town of Enfield and that the Town of Enfield is required to pay the tuition charge.

JAMES G. FROST
Assistant Attorney General