

MAINE STATE LEGISLATURE

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August 27, 1951

Yes

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. *see Shaw v Small 124 Me 36*

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