

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

September 25, 1951

To Everett F. Greaton, Executive Director, Maine Development Commission
Re: Release of State's Claim for Old Age Assistance

Last April you consulted George C. West, Assistant Attorney General assigned to the Department of Health and Welfare, concerning the State's claim in the amount of \$2256.00 for Old Age assistance granted to a beneficiary now deceased. Your question was whether or not the claim could be waived, as a brother of the deceased would not sell the property for the purpose of resale to an industry wishing to settle in Bridgton unless the State would waive its claim against the beneficiary's share of the property.

R. S. 1944, Chapter 22, Section 272, as amended by P. L. 1947, Chapter 336, provides in substance that upon the death of a beneficiary of Old Age Assistance the State shall have a claim against his estate for all amounts paid to him under the provisions of the Old Age Assistance Law. This same section provides:

"The attorney general shall collect any claim which the state may have hereunder against such estate."

This provision of the statute is very clear and uses the mandatory word "shall" throughout the section.

The Attorney General, as attorney for the State, has certain rights as an attorney representing a client to handle legal matters in such a way as will be for the best interest of the State, provided he does not in any way act contrary to legislative authority.

In this particular type of situation the legislature has laid the mandatory law that the State *shall* have a claim and that the Attorney General *shall* collect any claim which the State has. It does not seem, in view of the wording of this provision of the statute, that the Attorney General has any authority to waive the claim which the State has. This is a matter that is solely within the discretion of the legislature, and not within the province of the Attorney General's office.

It is therefore my conclusion that the only way the State's claim for Old Age Assistance can be waived is by legislative action. The Attorney General must proceed to collect as much of the claim as he can in view of the value of any particular piece of property which constitutes the estate of a deceased Old Age Assistance beneficiary.

ALEXANDER A. LaFLEUR

Attorney General

September 25, 1951

To Honorable Frederick G. Payne, Governor of Maine
Re: Appointment of Members of the Maine School Building Authority

This office has been requested to submit to Your Excellency our opinion with regard to Section 215 of Chapter 405, P. L. 1951, relative to the appointment of Members of the Maine School Building Authority.

The portions of said section to be considered read as follows:

"... and 1 member of the state board of education to be appointed by the governor, to serve during their incumbency in said offices, and 3 members at large appointed by the governor for terms of 3, 4 and 5 years respectively. .

"Appointive members may be removed by the governor and council for cause."

Article I, Part First, of the Constitution of Maine provides:

"... and he (the Governor) shall also nominate, and with the advice and consent of the council, appoint all other civil and military officers, where appointment is not by this constitution, or shall by law be otherwise provided for. . ."

By the authority of Section 215, Chapter 405, P. L. 1951, the Governor is the appointing power, the removal of such members being subject to the Governor and Council.

Such power is not in contravention of the Constitution, which provides for nomination by the Governor and appointment with the advice and consent of the Council only in particular instances and when appointment is not by law otherwise provided for. In the problem at hand, appointment is provided for by law, and it is therefore our opinion that the Governor, without the advice and consent of the Council, may appoint the members of the Maine School Building Authority.

JAMES G. FROST
Assistant Attorney General

September 26, 1951

To Morris P. Cates, Deputy Commissioner of Education
Re: State Subsidy Payment Rates for Evening School Programs, 1950-51.

Your memo of September 19, 1951, has been received at this office. Relatively to Section 166 of Chapter 37, R. S. 1944, you state that certain local superintending school committees during the school year 1950-51 made provision for evening schools which would be reimbursed under Section 166 of Chapter 37 by a sum equal to $\frac{2}{3}$ of the amount paid for instruction in such evening schools.

You also state that at this time the Department of Education is preparing certificates and warrants to distribute State reimbursements for the evening school program 1950-51. You further state that Section 166 of Chapter 37 was amended by Chapter 104, P. L. 1951, which provides that a sum equal to $\frac{1}{2}$ the amount paid for instruction for such evening schools shall be reimbursed by the State. Your question is, then:

"Will state reimbursements for approved evening school programs operated by local superintending school committees during the school year 1950-51 be paid in accord with Chapter 37, Section 166 ($\frac{2}{3}$ the amount paid for instruction) or Chapter 104 — P. L. 1951, Section 166, amended ($\frac{1}{2}$ the amount paid for instruction)?"