STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1951 - 1954

November 29, 1951

To Honorable Frederick G. Payne
Re: Running Horse Race Commission

Chapter 289 of the Public Laws of 1949 created the Running Horse Race Commission, consisting of three members appointed by the Governor with the advice and consent of the Council. Section 1 of that chapter provides that one member shall be appointed by the Governor as chairman and one as secretary.

This office has been requested to advise whether a system may be inaugurated whereby the chairmanship will vest in different members of the Commission. In other words, may the Governor appoint another member of the Commission to be chairman?

It is a general rule that when the removal of a public officer is not governed by constitutional or statutory provisions, the power of removal is incident to the power to appoint. Analagously, we are of the opinion that, as the term of the chairmanship of the Running Horse Race Commission is not fixed by law, constitutional or statutory, it is within the power of the appointing power to determine what the term of tenure of that chairmanship shall be. He may therefore by reason of setting up a system whereby the chairmanship shall vest in different members at different times or for other good reason appoint another member of the Commission to be chairman.

JAMES G. FROST
Assistant Attorney General

November 29, 1951

To Harland A. Ladd, Commissioner of Education
Re: Teacher Contract Law

We have your memo of November 13, 1951, relative to Chapter 203 of the Public Laws of 1951, amending Chapter 37, Section 78, subsection V of the Revised Statutes of 1944, in which memo you ask the following questions:

"(1) May each community determine the dates of its school year as related to teacher contracts?"

The answer to this question is, Yes. The matter of contracts between teachers and superintending school committees for employment is a local question, and the communities involved may determine the dates at which the contracts will begin and terminate.

"(2) The law provides for an automatic extension of a term contract '. . unless a duly certified teacher receives written notice to the contrary at least 6 months before the terminal date of the contract.'

"Should this notification be a decree of separation, or may it be properly an advisement nullifying the automatic extension provision of the law pending a later and final decision of the committee on the employment status of the teacher? If the latter situation prevails, am I correct in concluding that a new term contract must be issued?"

Chapter 203 states that after a probationary period subsequent contracts of duly certified teachers shall be for not less than two years, and furthermore that unless a duly certified teacher receives written notice to the contrary at least six months before the terminal date of the contract the contract shall be extended automatically for one year and similarly in subsequent years, with a further condition not pertinent here with respect to a longer extension of time.

It is our opinion that this six-month notification of termination of the contract amounts to a decree of separation and an advisement nullifying the automatic extension provision of the law. The service of a teacher having been dispensed with through this provision does not preclude the rehiring of the teacher at a subsequent date. Thought should be given here to the fact that subsequent rehiring of the teacher would mean that she would receive a two-year contract and that not giving the six-month notice would mean merely that her contract would continue for another year. The choice here is an administrative problem.

"(3) Can teaching service rendered to a community under a sub-standard license be recognized in fulfilling the probationary requirement, should the teacher become duly certified at a later time?"

It is our opinion, strictly, that if one is not presently properly qualified to hold a position, that person cannot be considered to be fulfilling a probationary period on that job. In other words, he cannot be considered to be serving a probationary period in a position to which he cannot ultimately secure permanent appointment under the same qualifications. However, it appears that the probationary period required by this law is a matter of local concern and is present in the law so that communities are given an opportunity to observe the abilities of the teacher concerned. As a result, if a teacher at a later date becomes duly certified, it might be unjust, if that teacher was to continue in the same position, to be held for a further probationary period if the town is perfectly satisfied that he is fully competent to fill the position.

"(3-A) To what extent may teaching service to a municipality be interrupted and still qualify as fulfilling the probationary requirement (i.e. could service be creditable if a duly certified teacher completed 1 year of service in 1930-31, separated for marriage, and returned to complete 2 years of service in 1949-51?)"

It is our opinion that where a probationary period is required as a prerequisite to becoming permanently employed in a position, interruption of that probationary period nullifies any benefits secured prior to the interruption. In other words, if a teacher completes one year of a probationary period, then separates to be married, and returns ten years later, she would then have a full three-year probationary period to serve.

We may add that if you consider the probationary period with a view to its purpose, namely to give the town an opportunity to observe the qualifications of the teacher, you might assume that the probationary period also is a local problem and an administrative one and that local authorities can determine whether or not leave of absence, or absence from teaching service, is of such a length as to vitiate the probationary period.

We have examined the suggested contracts attached to your memo and find that on the whole they are not inconsistent with the law. However, in Exhibit A and Exhibit B the thirty-day written notice and the notice on or before May 1st, respectively, may require some modification to distinguish them from the ninety-day notice requirement contained in Chapter 203.

JAMES G. FROST
Assistant Attorney General

December 3, 1951

To Irving W. Russell, Superintendent of Public Buildings
Re: Formal Contracts

In your memo of October 17th you inquire as to the necessity of obtaining formal contracts in cases where construction or repair of buildings involves a total cost of more than $3000.

The question as propounded is not one which can be explicitly answered without a better knowledge of just what facts gave rise to the question. To the necessity of there being a contract in instances where construction or repair of buildings involves a total cost of more than $3000, the answer is, "Yes." See opinion of the Attorney General dated September 28, 1909. What in fact constitutes a contract is another question.

Section 43, Chapter 14, R. S. 1944, spells out the requirements leading to a valid contract relative to the construction and repair of buildings at the expense of the State involving a total cost of more than $3000, stating that the contract shall be awarded by a system of competitive bids, and in subsequent sections the provisions to be followed with respect to such competitive bids are described.

An unconditional acceptance, by the proper authorities, of a bid submitted pursuant to a proposal or advertisement for bids for such a contract as you inquire about (for public work, etc.) upon the basis of plans, specifications, and terms of such proposal, and offering to do the work in accordance with the specifications, converts the offer into a binding contract. The need for an unconditional acceptance is necessary to meet the requirement of a valid contract that there be mutual consent. See *Howard v. Maine Industrial School for Girls*, 78 Maine 230. Under the above circumstances, there is a binding contract even though a formal bidder's contract has not been executed. Thus, a contractor, his bid having been unconditionally accepted, can enforce the contract, even though a "formal" contract has not been executed. Once these provisions have been complied with and the bidder's offer is accepted, unconditionally, a valid contract results.

If, however, the acceptance is conditional, depending upon whether the bidder must comply with a further requirement, such as a forfeiture bond, fulfilment of a performance bond, or other condition or restriction prescribed by the Governor and Council, then in such case there is not, at that point, a binding contract, until such condition is complied with.

Notwithstanding the legal aspects of the circumstances involving bids and specifications outlined above, we recommend that in all instances involving