

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

for the calendar years  
**1951 - 1954**

II. The state shall pay to the secretary of the treasury, at such time or times as may be prescribed under the Social Security Act, contributions with respect to wages, as defined in section 2, equal to the sum of the taxes which would be imposed by sections 1400 and 1410 of the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act;

III. Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein, but in no event may it be effective with respect to any such services performed prior to the 1st day of January, 1951.

IV. All services which constitute employment as defined in section 2, are performed in the employ of a political subdivision of the State, and are covered by a plan which is in conformity with the terms of the agreement and has been approved by the State agency under the provisions of section 5, shall be covered by the agreement."

By the provisions of the above quoted section the state agency is to enter a contract on behalf of the State with the approval of the Governor, which contract may contain provisions relating to the modification of the agreement between the state agency and the federal security administrator.

The original contract signed by the Governor having contained such modification provision, it is our opinion that the Governor, in signing the contract gave prior approval to such subsequent modifications to the original agreement as the state agency should make with political subdivisions of the State consistent with the provisions of the Social Security Act as amended.

JAMES G. FROST  
Assistant Attorney General

January 14, 1952

To Harland A. Ladd, Commissioner of Education  
Re: Schooling of Displaced Persons

We have your memo of December 26, 1951, in which you state that three displaced children of Grand Falls Plantation are attending school at Burlington and that their failure to grasp the English language has made it difficult for them to derive all the benefits from pursuing their education. You state that the superintending school committee of Grand Falls Plantation proposes a special program of education whereby these children would attend Burlington school during its regular sessions except for a period of 1½ hours each morning when they would receive special instruction in English from a tutor hired by Grand Falls Plantation.

You then ask if such a program is permitted under the provisions of Section 83 of Chapter 37 of the Revised Statutes and if local expenditures for tutorial services may be included in computing general-purpose educational aid provided by Section 201 of Chapter 37, as amended.

Section 83 provides generally that children of certain ages shall attend some public school during the time such school is in session, provided also that such attendance shall not be required if a child obtains equivalent instruction for a

like period of time in a private school in which the course of study and methods of instruction have been approved by the Commissioner, *or in any other manner arranged for by the superintending school committee with the approval of the Commissioner.*

This office has no objection to the Commissioner's approving such a special program of education, as we feel it is authorized by the underlined section above mentioned which we feel may properly be interpreted to include the program planned by Grand Falls Plantation. Consequently, such a program would come within Section 201 of Chapter 37.

JAMES G. FROST  
Assistant Attorney General

January 17, 1952

To Senator Foster Tabb

Re: Privilege from Arrest of Senators and Representatives during the Legislative Session

The Maine Constitution, Article IV, Section 8 provides:

"Senators and representatives shall, in all cases *except* treason, felony or breach of the peace, be privileged from arrest during their attendance at, going to, and returning from each session of the legislature."

The Supreme Judicial Court has spoken on the matter and their decision would seem to be directly in point. In *Chase v. Fish*, 16 Me. 132, a sheriff was ordered to arrest the defendant on an execution. The defendant claimed that he was exempt from arrest because he was a Senator of this State. The Court held that the sheriff was not bound to decide at his peril whether the defendant was a Senator of the State and whether he was on his way to attend a session of the Legislature. If the Senator was entitled to the immunity claimed, then there are legal modes by which his privilege might be vindicated. It might have been done by order of a court of competent jurisdiction, or by a judge on habeas corpus, and possibly under the authority of the body of which he was a member.

Privileges of this character, although founded upon what the public interest is supposed to require, when set up at the instance of the party, are regarded as personal and as such may be waived expressly or by implication when not asserted at the proper time and in the proper manner. It was held that, on the facts presented in this case, the defendant had waived his privilege.

It would thus appear that the privilege extended to Senators and Representatives is quite limited. If a person is arrested on process by an officer, his mere protest of the privilege is of no avail. To claim privilege, he must show that he comes within the privilege. He must, therefore, seek a court order, or by means of habeas corpus, or by order of the House of which he is a member, to show that he is (1) a Senator or Representative of the State of Maine, (2) that he is not charged with treason, felony, or a breach of the peace, and (3) that he is in attendance at, going to, or returning from a session of the Legislature. He must be, at all times, extremely careful that he does no acts and