

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

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

makes no statements that will constitute a waiver of the privilege that he claims.

ROGER A. PUTNAM
Assistant Attorney General

January 24, 1952

To Harland A. Ladd, Commissioner of Education
Re: School Bands

This opinion will affirm an oral opinion given by John S. S. Fessenden, Deputy Attorney General, to Fred L. Kenney, Director of Finance in your department, some weeks ago with respect to whether or not municipalities may appropriate money to subsidize school bands.

It was the opinion of the Deputy Attorney General that cities and towns may not authorize expenditures for the purpose of supporting school bands. This opinion was based on the fact that if the door were opened to permit towns to support school bands, then a precedent would be set for permitting municipal taxation for the purposes of supporting an endless number of activities which now are termed extra-curricular activities and not a definite part of basic education.

Chapter 80 of the Revised Statutes of 1944 spells out those powers granted to municipalities by the legislature, and the only section in that chapter which pertains to bands is Section 93, which states:

“Cities and towns may raise money for the maintenance or employment of a band of music for municipal purposes and public celebrations. The provisions of this section shall not be in force in any city or town unless approved by a majority vote of the qualified voters of such city or town at an annual election.”

We interpret this section that a town may authorize money to subsidize bands which are commonly used for municipal functions, and we do not believe that it authorizes a town to appropriate money to subsidize a school band.

As we stated at the beginning of this memo, the above is the content of the oral opinion expressed by Mr. Fessenden, which is now affirmed in all respects by this office.

JAMES G. FROST
Assistant Attorney General

January 28, 1952

To Ermo H. Scott, Deputy Commissioner of Education
Re: Equal Pay for Women Teachers

We have your memo of January 18, 1952, in which you ask certain questions relative to Chapter 308 of the Public Laws of 1951.

Chapter 308 reads as follows:

“In assigning salaries to teachers of public schools in the state, no dis-