

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

for the calendar years  
**1951 - 1954**

1856 that we are directed to the conclusion that Section 13 in itself cannot be construed to mean that a judge should be a resident of the City of Portland. . . .

JAMES G. FROST  
Assistant Attorney General

February 11, 1952

To W. Earle Bradbury, Deputy Commissioner, Inland Fisheries and Game  
Re: Fish Screen at Bear Pond

We have your memo of January 24, 1952, relative to Chapter 85, Resolves of 1951.

That part of the Resolve with respect to which you submit your question reads as follows:

“. . . Provided, however, that the Waterford Fish and Game Association shall assume all liability for the keeping of said screen at all times free from sticks, leaves and all debris, so that the same will not become clogged and prevent the free running of water through the same; . . .”

You ask: “If the screen is not kept clean and the water in the pond is raised to a level such as to cause damage to land owners adjacent thereto, who is the liable party in case of a civil suit for damages?”

It is the opinion of this office that the State is held free from liability in such a matter and that, properly, the Association or any one or more of its members are the liable parties.

JAMES G. FROST  
Assistant Attorney General

February 12, 1952

To Harland A. Ladd, Commissioner of Education  
Re: Status of Academies and Institutes

By your memo of February 5, 1952, this office is asked to determine the eligibility of academies and institutes in Maine to participate in the Federal vocational educational program as administered by your department.

You call attention to the fact that subsidization of such a program through funds made available to the State through Federal legislation is available only to public schools and not to those institutions of learning which are private in character, and you state that the United States Office of Education has requested that the status of academies and institutes be resolved with respect to their receiving this aid.

This office has felt for some time that the academies and institutes within the State of Maine cannot arbitrarily be classified as private on the basis of their names or titles. There is always the possibility that a school bearing the title “Academy” is, in fact, for some reason or other — perhaps under the provisions of Section 103, Chapter 37, R. S. 1944 — a public school.

Generally, a public school is distinguishable from a private school in that the former has certain characteristics not present in a private school. A public school is supported by general taxation, open to all free of expense, and under the control and superintendence of agents appointed by the voters.

We feel that generally a school bearing the name of "Academy" or "Institute" is a school sufficiently under public supervision and control to make it eligible for vocational training subsidization if, under the provisions of Section 96, Chapter 37, R. S. 1944, there exist a contract with the town in which the school is located, *and* a joint board or committee supervising those duties set forth in Section 96.

Such a contract and joint committee should provide the public supervision and direction necessary, for the purposes of vocational training, to classify such an educational institution as a public school.

It is our opinion that other academies and institutions having the characteristics of private schools in that they are incorporated by private individuals and do not have a combination of both contract and joint committee, are private schools.

We agree with the legal representative assigned to the Office of Education, Federal Security Agency, that the status of such schools is difficult of determination in some instances, and concur with him in his suggestion that the above mentioned method of determining their eligibility is as practicable a solution as can be found.

JAMES G. FROST  
Assistant Attorney General

February 12, 1952

To Harry E. Henderson, Deputy Treasurer of State  
Re: Distribution of Income from Trust Fund — Lands Reserved for Public Uses.

Chapters 167 and 260 of the Public Laws of 1951 are amendments governing the distribution of income earned by the trust fund known as "Lands Reserved for Public Uses".

Chapter 167, P. L. 1951, provided that the rate of interest to be distributed to plantations and unorganized townships be changed from 6% for organized plantations and 4% for unorganized townships to a rate which would represent the income actually earned by the investments of the fund in a calendar year.

Chapter 167 becomes effective March 1, 1952.

Chapter 260, P. L. 1951, amending subsection II of Chapter 32, Section 38, R. S., became effective on August 20, 1951. Section 1 of Chapter 260 reads as follows:

"II. the balance then remaining shall be added to the unorganized territory school fund; the treasurer of state shall file with the commissioner of finance, on or before January 15 of each year, a list of interest earned by the unorganized townships fund during the preceding calendar year; such list shall be arranged to show the principal amount held for each