STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1951 - 1954

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

unorganized township and the interest earned thereon; the commissioner of finance shall thereupon transfer the total amount of such list, less the allocation provided for in subsection I, to the unorganized territory school fund for the fiscal year following the date of such list; a copy of said list shall be transmitted to the commissioner of education by the treasurer of state."

You state with respect to these amendments that it has been the practice in the past to use the balances for all plantations and townships as they appeared on December 31st of each year and to pay 6% and 4%, respectively, on those balances. You then ask two questions concerning the interpretation of these two chapters:—

"Under the provisions of Chapter 260, P. L. 1951 is it proper to continue using the balances of principal for the various plantations and townships as of December 31 as a basis for computing the amount of income to be distributed to each plantation and unorganized township?

"If not, what balances would be proper as a basis for the distribution of this income?"

It is our opinion that you may continue to use December 31 as the date for determining the balances upon which interest shall be paid. It appears, from our point of view, that the selection of a particular day for determining the balances upon which interest is to be paid is a reasonable way of determining the interest, from the standpoint of administration of the funds.

With respect to your second question you state that in December, 1951, the Department of Education submitted a journal entry by which the amount of 4% interest for unorganized townships was transferred to the unorganized territory school fund mentioned in Chapter 260, P. L. 1951, such transfer disposing of the interest earned in the calendar year 1951, plus a portion of the legislative appropriation necessary to make the amount transferred equivalent to 4%.

You then ask if such a transfer is permissible under Chapter 260 or whether it will be necessary to take away from the unorganized townships school fund for the present that amount of interest transferred to it in December, so as to make it available in the fiscal year beginning July 1, 1952, in accordance with the provisions of Chapter 260.

In answer to this question it is our opinion that the fund provided for in Chapter 260 was prematurely transferred by the Department of Education to the unorganized territory school fund. Chapter 260, subsection II, clearly defines a series of steps to be taken with respect to this fund and requires that the Treasurer of State shall file with the Commissioner of Finance by January 15 a list of interest earned by that fund during the preceding calendar year, with a copy to the Commissioner of Education.

It further provides that the Commissioner of Finance shall transfer the total amount of such list, less the allocation provided for in subsection I, to the unorganized territory school fund for the fiscal year following the date of such list. Literally, this statute means that upon January 15, or before, of the year 1952, such list shall be made by the Treasurer of State and submitted to the Commissioner of Finance and that on July 1, 1952, or the beginning of the fiscal year following the date of such list, that fund shall

be transferred to the unorganized territory school fund. It therefore appears that when July 1, 1952 comes, if the present transfer remains unaffected, the Commissioner of Finance will be unable to do an act required of him by our statutes. It follows that of necessity our opinion must be that that fund transferred by journal entry in December, 1951, must be re-transferred back to the Treasurer of State and credited to the funds for Lands Reserved for Public Uses, so that it may, in accordance with Chapter 260, be transferred by the Commissioner of Finance at the beginning of the 1952-1953 fiscal year.

JAMES G. FROST
Assistant Attorney General

February 12, 1952

To Carl T. Russell, Deputy Commissioner of Labor and Industry
Re: Fifty-Four Hour Law

We have before us a letter which asks if stenographers and other clerical office workers are covered by Section 22 of Chapter 25, R. S. 1944, as amended.

Consideration cannot be given to Section 22 alone, but those provisions exempting certain employees from the provisions of Section 22 must also be considered.

Section 24-A states that the provisions of Sections 22-26, inclusive, shall not apply to any female working in an executive, administrative, professional or supervisory capacity or to any female employed as personal office assistant to any person working in an executive, administrative, professional or supervisory capacity, and also provides for other exemptions not here pertinent.

With respect to the interpretation of Section 24-A we refer you to an opinion written on June 7, 1948, by Ralph W. Farris, then Attorney General, which opinion would seem to answer the present question. That portion of Mr. Farris's opinion with which we are interested reads as follows:

"In my opinion this statute does not apply to all office workers, but only to those who are personal office assistants to any person working in an executive, administrative, professional or supervisory capacity. Many file clerks, bookkeepers, stenographers, etc., in mercantile establishments, stores, restaurants, laundries, telegraph offices, etc., may not be personal office assistants to these persons enumerated in Section 24. In my opinion it is a matter of administration in your office, as to whether or not a certain stenographer or file clerk is a personal office assistant to those exempted under the language of the statute. I will admit that the language of the statute is very broad and might cover stenographers and file clerks, if the facts disclosed that they were personal office assistants to those persons enumerated in Section 24."

From a consideration of the above quoted paragraph from Mr. Farris's opinion it would appear that your department has administrative responsibility in ascertaining which particular individuals are exempted by reason of Section 24-A.

JAMES G. FROST
Assistant Attorney General