

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years  
1951 - 1954

125 should be paid to the Treasurer of State and credited to the Department of Inland Fisheries and Game.

Section 125 provides that whoever, *while on a hunting trip*, or in pursuit of wild game or game birds, negligently or carelessly shoots and wounds or kills any human being, shall be punished by a fine of not more than \$1000 or by imprisonment for not more than 10 years.

Section 110 provides that all fees, fines and penalties recovered under any provision of this chapter, and money received or collected shall be paid to the Treasurer of State and credited to the Department of Inland Fisheries and Game for certain functions of that department. The obvious intent of section 110 is clearly stated in the above sentence. Therefore the fines collected from one who violates the provisions of section 125 shall be handled as provided for in section 110.

It is to be noted that this penalty is to go to the Treasurer of State and be credited to the Department of Inland Fisheries and Game only if the accident happens while on a hunting trip. If the person is not prosecuted under an indictment clearly showing a violation of section 125, that is, while on a hunting trip, then we feel that the money should not be credited to your department.

JAMES G. FROST  
Assistant Attorney General

February 21, 1952

To Donald F. Ellis, Secretary, Board of Registration in Optometry  
Re: Incorporation

. . . You state that the Social Security Act exempts optometrists and others in certain self-employed fields from being included under the Act so far as their own benefits are concerned. You then ask if it is possible for an optometrist to incorporate his own practice and have the corporation pay him a salary or profit, so that he will come within the Social Security Act.

The Social Security Act is a Federal law and we believe that the Federal Security Agency, through its Social Security Board, would have the right to determine who are eligible or ineligible to participate in the benefits extended through the Social Security Act. If they excluded optometrists, we feel that that is the final answer.

With respect to our Maine laws and the common law, which is held to apply in the State of Maine, while the corporation is in some sense a person and for many purposes is so considered, yet with respect to the learned professions, which can be practised only by persons who have received licenses after having submitted to examination to display their knowledge of their subjects, it is recognized that a corporation cannot be licensed to practise such a profession.

"For example, there is no judicial dissent from the proposition that a corporation cannot lawfully engage in the practice of law."

13 Am. Jur., page 838.

Thus, the statutes of the State of Maine provide who may practise optometry and require an applicant for a license to pass an examination and to meet certain additional requirements. This would necessarily exclude all but natural persons from the right to obtain licenses. For these reasons a corporation may not engage in the practice of optometry. We would therefore deem it our duty not to approve any corporation whose certificate is submitted to this office, where the avowed purpose would be to engage in the practice of optometry.

JAMES G. FROST  
Assistant Attorney General

February 21, 1952

To Harland A. Ladd, Commissioner of Education  
Re: Contracts between the Maine School Building Authority and Community School Districts

We have your memo of February 12, 1952, relative to community school districts and the Maine School Building Authority, the provisions pertaining to both of which are contained in Chapter 37 of the Revised Statutes and Chapter 127 of the Resolves of 1951.

You ask the following question: Can the Maine School Building Authority contract with community school districts in excess of the combined valuation of the participating towns?

A community school district may be accepted by the voters of towns and cities as provided by the Enabling Act in the Revised Statutes of 1944, Chapter 37, sections 92-A to K, inclusive. Under the provisions of Section 92-D the limit of indebtedness of the district may be established as a certain amount, but may not exceed 5% of the total of the last preceding valuation of all the participating towns, whichever is the lesser. This 5% limitation is the express mandate of the legislature.

If we are to say that the Authority may contract with a community school district for a sum over this express limitation, then we feel that it must be clearly shown that the 5% limit has been removed. We find no express provision of any statute eliminating the 5% limit.

The importance of the Maine School Building Authority and of the security to which a purchaser of its bonds must look for payment compels us to conclude that the limitation cannot be impliedly removed. If it were the intent of the legislature that the Building Authority could contract with a community school district in an amount in excess of the 5% limitation in the Enabling Act, it is well hidden.

This statutory debt limitation not being expressly removed by the legislature and it not being possible to infer its elimination our conclusion is that the Maine School Building Authority may not contract with community school districts in excess of the combined valuation of the participating towns.

JAMES G. FROST  
Assistant Attorney General