STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1951 - 1954

March 3, 1952

To Eleanor G. Powers, Director, Special Education for Physically Handicapped Children

Re: Hospital Instruction Costs

We have your memo of February 6, 1952, relative to Sections 180-A through 180-I pertaining to the hospital instruction conducted under those sections for physically handicapped children at the State Sanatoria, the Maine General Hospital, and the Hyde Memorial Home. You outline in some detail the procedure used by the Division of Special Education in determining which of the children hospitalized are eligible for education under this program. You then ask the following questions:

"1. Is there anything contrary to the law establishing Special Education (Sections 180-A to I inclusive, Chapter 37, R. S.) in the above procedure for handling cases of hospital instruction?"

Our answer is in the negative.

"2. Is a child's town of legal school residence responsible for a child's education whether he is in school or having home or hospital instruction under approved programs of the Division of Special Education, at least to the extent of the per capita cost?"

The answer to Question 2 is in the affirmative.

"3. Can a community, by local action of the superintending school committee, deny a child hospital instruction given under an approved program of the Division of Special Education?"

The answer to Question No. 3 is in the negative. With respect to the obligation of a town and its responsibility to handicapped children, we refer you to an opinion by Ralph Farris to the Commissioner of Education dated November 7, 1950, more particularly the last paragraph of that opinion. Though we feel that a town is responsible for the education of its children, when the children are hospitalized the town is responsible only to the extent of the per capita cost of educating normal children in their respective school districts and not the excess above that normal cost that is generally required when a child is not hospitalized.

JAMES G. FROST
Assistant Attorney General

March 3, 1952

To Guy R. Whitten, Deputy Insurance Commissioner

Re: Examination, Certain Agents

You have asked this office to interpret Section 252 of Chapter 56, R. S. 1944, as amended by Chapter 277, Public Laws of 1951, with regard to whether or not agents of domestic life insurance companies which engage in selling casualty insurance must take the examination provided for in Section 252.

That portion of Section 252 with which we are here interested reads as follows:

"Before any person is licensed as hereinbefore provided as a first-time agent of any foreign casualty or foreign fire insurance company, or as a first-time insurance broker, he shall pay to the commissioner a fee of $10, and appear in person at such time and place as the commissioner, his deputy, or any person delegated by the commissioner or his deputy shall designate in writing for that purpose, for a personal written examination as to his qualifications to act as such agent or broker."

Section 2 of Chapter 277, P. L. 1951, amended the above quoted paragraph by deleting the word "foreign" before the word "casualty". Prior to this amendment agents of foreign life insurance companies which sell accident or health insurance were required by law to be examined.

Section 249 provides for the licensing of agents of domestic insurance companies, agents of foreign life insurance companies, or agents of foreign life insurance companies which sell accident and health insurance.

Section 250 provides for the licensing of brokers. Section 251 provides for the licensing of firms and corporations as agents and brokers.

You state that under the existing law, Section 252 as amended, that is, the word "foreign" having been deleted before the word "casualty", the question now arises whether agents of domestic life insurance companies must be examined along casualty insurance lines with other companies engaged in the selling of casualty, accident and health insurance policies.

We think this question can be answered without regard to Section 252 and the amendment thereto. The first sentence of Section 249 would appear to give the Insurance Commissioner the right to require examination of agents selling any class of insurance policies. This sentence reads as follows:

"The commissioner may issue a license to any person to act as an agent of a domestic insurance company. . ."

This sentence then goes on to require the licensing of agents of a foreign life insurance company, or of a foreign life insurance company which sells accident and health insurance. That this sentence contemplates the licensing of agents who sell casualty insurance is seen in Chapter 256 of the Public Laws of 1951, which, in amending Section 249, provides:

"A license shall be refused or a license duly issued shall be suspended or revoked or the renewal thereof refused by the insurance commissioner if he finds that the applicant for or holder of such license has obtained or attempted to obtain such license not for the purpose of holding himself out to the general public as a fire or casualty agent, but primarily for the purpose of soliciting, negotiating or procuring contracts of fire or casualty insurance indemnifying himself or the members of his family or the officers, directors, stockholders, partners, employees of a partnership, association or corporation of which he or a member of his family is an officer, director, stockholder, partner or employee."

This amendment, we think, clearly shows that the licensing provided for under Section 249 embraces the licensing of casualty agents.

This opinion does not attempt to distinguish between life insurance companies and casualty companies as such. We are saying that the Commissioner has the discretion to require examinations for agents of any domestic insurance

company who sell any type of insurance, whether it be a life insurance company selling only life insurance or a life insurance company selling casualty, accident and health policies, or whether it is a casualty company selling casualty insurance.

JAMES G. FROST
Assistant Attorney General

March 17, 1952

To Willis H. Allen, Examination Supervisor, Personnel Department
Re: Korean Veterans

This will acknowledge your letter of March 4, 1952, relative to an interpretation of Chapter 360 of the Public Laws of 1945.

The pertinent portions of Chapter 360 read as follows:

> "For carrying out the provisions of this section, the following dates of active service in the United States armed forces shall be: . . .
>
> "V. World War II, December 7, 1941, and the date of cessation of hostilities as fixed by the United States Government."

On February 20, 1948, Mr. Fred Rowell requested that this office determine the dates marking the beginning and ending of World War II. In answering Mr. Rowell's request, Abraham Breitbard quoted the following proclamation of Harry S. Truman:

". . . Now, therefore, I, Harry S. Truman, President of the United States of America, do hereby proclaim the cessation of hostilities of World War II, effective at twelve o'clock noon on December 31, 1946."

and declared that it was his opinion that this proclamation was controlling in determining when under our statute the cessation of hostilities was fixed by the United States Government. He then added that a veteran, to be entitled to the preferences provided for in that Act must have been in the active service between December 7, 1941 and December 31, 1946 at 12 o'clock noon.

You now ask this office if veterans of the Korean campaign have a veterans' preference in State employment and what dates have been established for the eligibility period. This question is, no doubt, prompted by the action of the 1951 Legislature, as seen in Chapter 157 of the Public Laws of 1951, in which chapter the legislature attempted to amend laws pertaining to veterans to include those who participated in the Korean campaign. In amending the above quoted section of the law, subparagraph V. was changed to read as follows:

> "World War II, December 7, 1941, and the date of the cessation of hostilities as fixed by the United States Government *for civil service employment purposes.*"

Public Law 359, Section 3, approved January 27, 1944, 58 Stat. 387, Chapter 287, provided for preferences to veterans taking Federal Civil Service examinations. This section, granting preferences to veterans, was repealed by Public Law 239, approved July 25, 1947, 61 Stat. 449, Chapter 327. By these last two mentioned statutes, the United States Government has, for Civil Service