

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

March 17, 1952

To Earle R. Hayes, Secretary, Maine State Retirement System
Re: Fort Fairfield Public Library

You inquire if the Fort Fairfield library can be considered a body corporate and politic and therefore eligible for Social Security coverage under the provisions of Chapter 395 of the Public Laws of 1951.

"A body politic and corporate created for the sole purpose of performing one or more municipal functions . . . is a quasi-municipal corporation."

This definition, along with an amendment to Chapter 60, Section 16, subparagraph I, whereby the words, "public library corporation," were inserted in the first sentence of that subparagraph, shows the intent of the legislature to define a public library corporation as a quasi-municipal corporation.

A quasi-municipal corporation is, then, a body politic and corporate.

However, with respect to the Fort Fairfield library we have been unable to find in our reference works any indication as to whether or not it is a corporation. A check with the Secretary of State's office shows that they have no information showing that it is a corporation.

You will recall that the benefits of Chapter 395 are extended to employees of political subdivisions of the State of Maine, and a political subdivision is defined as an instrumentality of the State or one or more of its political subdivisions, but only if such instrumentality is a juristic entity. This term, a juristic entity, really means that it is necessary that the body be a corporation. In the absence of definite proof that the Fort Fairfield library is a corporation, our opinion of necessity must be that its employees are not eligible to participate in the benefits extended by Chapter 395 of the Public Laws of 1951.

JAMES G. FROST
Assistant Attorney General

March 18, 1952

To Col. Francis J. McCabe, Chief, Maine State Police
Re: Overtaking Vehicles - when not to pass.

We have your memo of March 14, 1952, relative to the interpretation of Section 104 of Chapter 19, R. S. You state that you have experienced a disagreement in the interpretation of the second paragraph of Section 104, that it is the contention of some persons that that paragraph applies only when a motor vehicle is overtaking another on a hill or a curve. You have therefore asked this office to express an opinion as to whether or not this section is limited to vehicles moving on hills or curves, or whether it pertains to the passing of motor vehicles on any stretch of road, regardless of contour.

The pertinent paragraph in which we are interested reads as follows:

"In every event the overtaking vehicle must return to the right hand side of the roadway before coming within 100 feet of any vehicle approaching in the opposite direction."

It will be noted that the first paragraph of Section 104 has particular reference to grades or curves, that the third paragraph relates to passing at steam or electric railway grade crossings and at intersections. Similarly the fourth paragraph deals with curves or grades.

Returning to paragraph 2, we find that this provision does not pertain only to hills, curves, grades or grade crossings or intersections, but is preceded by the words, "In every event." It is our opinion that the construction of this section, looking at all four paragraphs and giving consideration to the wording of those paragraphs, particularly the words, "In every event", would lead us to only one conclusion and that is that paragraph 2 relates to the passing of motor vehicles on any stretch of road without regard to its contour or grade.

JAMES G. FROST
Assistant Attorney General

March 25, 1952

To N. S. Kupelian, M. D., Superintendent, Pownal State School
Re: "Nearest Relative or Guardian"

Receipt is acknowledged of your letter of March 20, 1952, in which you state that a sister is interested in the eugenic sterilization of a patient in your institution. You state that the patient has a mother but that her whereabouts are unknown, and you ask if the sister is the proper person to sign the eugenic sterilization paper.

Sections 158 et seq. of Chapter 23 are those sections controlling sterilization and speak of "nearest relative or guardian".

Where the mother is living, we believe that she is the nearest relative; but that if her whereabouts cannot be ascertained, then the sister may be the proper person to sign the papers, if she is the legal guardian of the patient. It is our opinion that in the absence of the mother, the sister should be made a legal guardian and not a natural guardian with respect to authority to sign sterilization papers.

JAMES G. FROST
Assistant Attorney General

March 25, 1952

To Earle R. Hayes, Secretary, Maine State Retirement System
Re: Employees handling School Lunch Programs

We have your memo of March 11, 1952, in which you inquire about the status of employees in school lunch programs and to which you attached for our information an opinion from the Collector of Internal Revenue.

The effect of the ruling of the Collector of Internal Revenue is that such persons are employees of the town and hence not eligible for Social Security coverage, so far as the Internal Revenue Bureau itself is concerned. He states that such services are excepted from employment by reason of the pro-