

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

for the calendar years  
**1951 - 1954**

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-

visions of Sections 1426 (b) (7) and 1607 (c) (7), of the Federal Insurance Contributions Act and the Federal Unemployment Tax Act. They were also excepted under Sections 1426 (b) (8) of the Federal Insurance Contributions Act as amended by the Social Security Act amendments of 1950 and Section 1607 (c) (7) of the Federal Unemployment Tax Act on and after January 1, 1951. As stated, the effect of such exceptions means that these people are employees of the town and therefore may not participate in the Federal Act unless by virtue of our Maine Federal Social Security Act, Chapter 395 of the Public Laws of 1951, which chapter extends to the employees of the political subdivisions of the State of Maine the benefits of Social Security.

Our question is, then, Are these persons employed for the purposes of hot school lunches employees of a political subdivision of the State of Maine and therefore eligible to participate in the above mentioned Act?

At common law there are four elements which are considered on the question of whether the employer-employee or master and servant relationship exists, namely, the selection and engagement of the servant, payment of wages, power of dismissal, and power of control of the servant's conduct. You question whether or not all of these elements are present, because you state that the funds from which these people are paid are apparently derived from various sources, such as the Federal Government, State Department of Education, the town itself, and certain charitable organizations.

In the State of Maine, the hot lunch program and persons employed to handle such program are under the direct control and supervision of the superintending school committee. It is my understanding that this committee has the right to hire and fire, that it pays the wages, and that it at all times has the right to control the employee in the performance of the employee's duties. Primarily, the employee is paid from a fund which is composed in one part of a contribution from the Federal Government and the remainder from sums paid by the student in purchasing the lunch. At any rate the superintending school committee has control of such fund and for all practical purposes it can be said that that committee pays the wages. All four elements comprising the relationship of employer and employee being present, it is our opinion that the persons employed to handle the hot school lunches are employees of the political subdivision in which the school is situated and are there eligible to participate in the benefits extended by Chapter 395 of the Public Laws of 1951.

It may be possible that in a rare case the hot lunch program has been contracted for by an independent contractor, in which case the independent contractor would not be eligible to participate in our Social Security program. We feel that the great majority of such programs are handled by the employees of municipal subdivisions of the State.

If you have any question with respect to the status of these employees, that is, whether or not they are employees or independent contractors, reference to the four elements above mentioned will be helpful to you.

JAMES G. FROST  
Assistant Attorney General