

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

April 29, 1952

To Fred M. Berry, State Auditor

Re: Interpretation of "Properly Avouched"

This office is in receipt of your memo relative to an interpretation of section 25 of Chapter 37 of the Revised Statutes of 1944, which reads as follows:

"No money appropriated by law for public schools shall be paid from the treasury of any town except upon written order of its municipal officers; and no such order shall be drawn by said officers except upon presentation of a properly avouched bill of items, said bill of items having first been approved by a majority of the members of the superintending school committee and certified by the superintendent of schools."

In answer to your question whether the law permits the selectmen to authorize payment of bills as submitted by the school board on a roll of accounts without substantiating these charges with original invoices, it is our opinion that a properly avouched bill of items would be either the original invoices or a certified copy of the original invoices.

JAMES G. FROST
Deputy Attorney General

April 30, 1952

To W. Earle Bradbury, Deputy Commissioner, Inland Fisheries and Game

Re: Certain Expenditures from Dedicated Revenue

This will acknowledge your memo of April 22, 1952, relative to the interpretation of paragraph 10 of Section 63 of Chapter 33 and Section 110 of that chapter of the Revised Statutes of 1944. The latter provides:

"All fees, fines and penalties recovered and money received or collected shall be paid to the treasurer of state and credited to the department of inland fisheries and game for the operation of fish hatcheries and feeding stations for fish, for the protection of fish, game and birds, and for printing the report of said commissioner and other expenses incident to the administration of said department, and shall be expended by the said commissioner for the purposes for which said department is created."

You ask: "Can a portion of the funds received under the two sections quoted above legally be expended for 'Educational Purposes' so-called or Public Relations and Publicity?"

Consideration of the definition of the term "administration" is necessary in answering your question. The word "administration" means managing or conducting an office or employment; performance of the executive duties of an institution, business or the like. Administration of a department is analogous to administration of statutes, and regardless of desirability, activities which are not reasonably to be classed as a cost of administration are not permissible.

In the case of a department of the State of Maine, "other expenses incident to the administration of said department" means expenses incurred in managing the department in such a way that it will function within the statutes and in a direction leading ultimately to the aims of the statutes relating to that

department. Thus, expenditures by a department for a purpose outside the sphere of its activity, as delineated by the statute would be improper. By our interpretation, the phrase, "and other expenses incident to the administration of said department," might read: "incident to the *managing in a manner not inconsistent with the statutes relating to* said department."

It is our opinion, applying the principles above stated, that any extended educational program including the accompanying public relations and publicity over and beyond the accompanying public contact customarily engaged in by a department of the State must first receive the approval of the legislature.

Our attention has not been directed to, nor have we been able to find, any provision in Chapter 33 which would permit of a full-time educational service.

JAMES G. FROST
Assistant Attorney General

May 2, 1952

To H. B. Peirson, State Entomologist
Re: Tree Surgery Licenses

This office has your memo of April 24, 1952, relative to Sections 51 and 52 of Chapter 32 of the Revised Statutes, especially:

" . . . and may be renewed by the board for succeeding years without further examination, upon payment of the fee hereinafter required, provided any person, firm or corporation receiving such certificate shall be responsible for the acts of all employees in the performance of such work."

You state that if an applicant has dropped his license to go into other work and has applied within a two or three year period for his renewal, your Board feels that it may issue the renewal certificate upon requiring the applicant to pay back fees over the years for which he held no license, without taking another examination. You ask if this is a proper procedure under the law.

The rules and regulations promulgated by your Board provide that if application is made within one month following the expiration date of a certificate, a demit covering a period of two years may be issued without charge, entitling the holder to obtain a renewal certificate for one year upon the payment of the regular \$3. fee; and again at the discretion of the Board an applicant whose license has expired may be permitted to pay for the intervening years and thus be granted a renewal certificate without examination.

The authority to make rules and regulations is a delegation of authority from the legislature to particular administrative authorities. This power has never been considered a power to make law, but a power to carry into effect the law of the lawmaker as expressed by statute. Delegation of power cannot be extended to the making of rules which subvert the statute reposing such power or which are contrary to existing laws or which repeal or abrogate statutes.

You will note that the above quoted phrase from Section 52 of Chapter 32 provides that the license may be renewed by the Board for the succeeding years. Applying the general rule with regard to power to promulgate rules and