

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

regulations we must conclude that demits or the granting of renewals on payment of fees for years in which no license has been held is contra to the sentence which reads that the certificate "may be renewed by the board for succeeding years." The term "succeeding" means the next regular or subsequent term, in this case, year. It is therefore our opinion that renewals must be granted for "succeeding" years and that when a person does not hold a license for a period of a year or longer he must be required under your law to submit to another examination.

We recommend that, if you desire to continue the practice of granting renewals in the event an applicant has been without a license for not more than two or three years, this privilege be granted in your law by the next legislature.

JAMES G. FROST
Deputy Attorney General

May 7, 1952

To Harry E. Henderson, Deputy Treasurer of State

Re: Attestation of Signature of Treasurer of State on Certain Bonds

We have your memo of April 29, 1952, in which you state that in so far as registered bonds are concerned the attesting officer is the Finance Commissioner and in which you ask who is the proper person to attest the signature of the Treasurer of State on unregistered bonds.

There is no doubt that the Finance Commissioner is the proper person to attest the signature of the Treasurer of State on registered bonds. With respect to unregistered bonds we have found no statute which provides for signatures on such bonds. There being no statute regulating the signatures on unregistered bonds, we feel that in the Council Order authorizing and empowering the Treasurer of State to issue bonds there should also be a provision authorizing the signatures to be affixed to the bonds. In other words, there should be a paragraph in the Council Order stating that such bonds shall be signed by: 1) The Governor; 2) the Treasurer of State; and 3) attested by either the Auditor or the Finance Commissioner. We feel that there should be some authorization for such signatures, and in the absence of any authorization by statute that it should be by order of the Governor and Council. A choice should be made between the Auditor and the Finance Commissioner, and in view of the statute relative to registered bonds we feel that the Finance Commissioner is a proper person to attest the signature of the Treasurer of State on unregistered bonds.

JAMES G. FROST
Deputy Attorney General

May 7, 1952

To Roland H. Cobb, Commissioner of Inland Fisheries and Game

Re: Liability — Swan Island

This office has received your communication inquiring as to the State's liability in case of accident to visitors to Swan Island. You state that you have

to ferry them across the river in your boats and take them over the island, using a pickup truck, and you inquire what the State's liability would be in the event an accident occurs during such transportation or during such time as a party happen to be staying there over night.

The general rule is that the State can sustain liability only by reason of a contractual obligation. Otherwise the State is not liable for the tortious acts of its officers, unless the State assumes such liability through statutes. The State is immune from suit by private citizens, as likewise are its agencies and instrumentalities. Briefly, in the absence of a contract and in the absence of a statute by which the State might assume liability, the State has no liability with respect to accidents which might occur en route to or while visitors are on Swan Island. This rule does not, of course, apply to individuals in State employ who may be responsible for such accidents. An individual himself may be liable under the same rules as would a private individual in the same circumstances.

JAMES G. FROST
Deputy Attorney General

May 8, 1952

To Harland A. Ladd, Commissioner of Education
Re: Five-year Limit on Certain Credits

Section 201, as revised, of Chapter 37, R. S. 1944, provides in part that the renewal of each teaching certificate shall be conditional upon the completion of at least six semester hours of professional study within each period of five years. Contained in the same section is a paragraph stating:

“Subject to the foregoing provisions of this section, the state board of education may make such reasonable regulations as are deemed necessary for carrying out the purposes and provisions of this section.”

You ask if the State Board of Education may legally and properly effect a regulation which would give a year of grace by authorizing certification under a special license in hardship cases involving hospitalization, illness, or critical family circumstances which make it virtually impossible for the teacher to attend a summer session or to participate otherwise in formal study for credits.

It is the opinion of this office that such a regulation is not permitted under the wording of the above quoted requirement. The teacher is given a period of five years within which he or she shall acquire six semester hours of professional study; and a reading of this section shows that it is a mandatory condition and the period should not be extended beyond the five years.

Rules and regulations are permitted to be made under the theory that the legislature is delegating that authority; but such rules and regulations must be within the intent of the statute and not inconsistent with it. It may be that consideration will show that this statute is unduly strict, in which case you may believe it necessary to present it to the next legislature for amendment.

However, the intent of this provision is plain and we feel that rules and regulations which would extend the privilege in certain cases to go beyond five years would not be a proper use of the delegated power.

JAMES G. FROST
Deputy Attorney General