

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

at all times stand clear of all possible litigation which would cast any unfavorable light upon the Authority and more specifically upon its bonds. It is one thing to issue bonds and another thing to create a market and sell them. This bond is entirely new to the field and we must go forward with extreme caution.

We are not unmindful of the wording of the Act found on page 484 of the Public Laws of 1951 that the Authority may acquire the properties of a town, a school district or community school district. This is the only reference in the entire Act to school districts. All further references are to towns or community school districts. This reference alone is not enough to allow the Authority to do business with a school district. The Authority may contract only with towns or community school districts. See Section 218, Chapter 405, Public Laws of 1951. Further, we cannot liberally construe the words of the Act to the point of doing a legal injustice to the law as it exists.

You will note that the charter of the Norridgewock School District has been amended to read as follows: "for the purpose of erecting, equipping, and maintaining on said land, school buildings, and for the purpose of maintaining elementary and high schools." See Chapter 130, Private and Special Laws of 1945. These broad general provisions delegating the power to construct and repair buildings for school purposes, raises the question, which underlies our whole theory: Did the Legislature remove the power of constructing new schools from the town itself by giving that power to a school district? The answer to this problem may be, Yes or No, but because we cannot resolve it completely one way or the other, we must, as explained above, by necessity exclude such cases from consideration.

This is not to say that you are without a remedy. The Legislature could clear up this problem with proper legislation. I cannot agree that you would have to wait ninety days after adjournment to get effective legislation, for an emergency amendment would be in order if the need is as great as your letter indicates. Until some remedial legislation is passed to clear up this situation, I feel that this office as well as bond counsel and trustee counsel, is justified in excluding from consideration those towns which have unrejected school districts, coterminous with the town.

I am sorry that this doubt has appeared and caused you and your town this delay in getting its new school. I am sure, as stated above, that this situation can be remedied.

ALEXANDER A. LaFLEUR
Attorney General

July 10, 1952

To General Spaulding Bisbee, Director, Civil Defense and Public Safety
Re: Power of Arrest

This will acknowledge your memo of June 19, 1952, and the attached letter from Martin Watson, First Vice Commander, American Legion, Veazie, Maine, who asks if there is any law that can be enforced, by which auxiliary police have the power to stop people during air raid tests.

Before answering the direct question I should like to comment on Mr. Watson's letter. Originally, the Civil Defense program is based upon a form of hierarchy extending from the Director and his Deputies to the County Director and his Deputies to the local municipalities. If Mr. Watson was attempting to stop automobiles or people under the direction of the County Director or one of his Deputies, then his problem should be presented to you through channels via the County Director. If he was not conducting this activity in conjunction with the county organization, then he should have been doing so and, again, his authority to stop should have been derived through county directions, and his questions concerning such authority should be directed to the county officers. In other words, from the wording of Mr. Watson's letter there appears to be no coordination between the local raids in which he participated and the County Directors. His letter, as a result, points out exactly the problem that would arise if auxiliary police or other people were indiscriminately given the power to arrest or otherwise enforce what they believe to be laws relating to air raids.

In answer to Mr. Watson's letter and for your advice, the problem presented is an extremely important one and should be very carefully considered before an ultimate answer is given.

Examination of the statutes involved reveals that Chapter 273 of the Public Laws of 1951 amended section 7 of the Civil Defense Act to give police sections of Mobile Reserve Battalions the power to arrest. Prior to this amendment the State Civil Defense law contained no provision with respect to powers of arrest. It is my thought that Mobile Reserve Battalions having been specifically granted the power of arrest, such power is not granted to other officers in the Civil Defense set-up. It will be noted that the power of arrest given to these battalions can be exercised only when such battalions have been called to duty upon orders of the Governor, presumably in times of emergency.

Referring to letters of my predecessor, Mr. Fessenden, I find that on May 29, 1951 he expressed his opinion relative to this problem, stating that it was his opinion that in "dry runs" there should be no actual stopping of vehicles, there being no particular purpose for such stopping, and that the placing of individuals at appropriate locations with the assignment of making a count of vehicles passing would give the necessary experience to show what problems would be in an actual emergency.

JAMES G. FROST
Deputy Attorney General

July 22, 1952

To Roland H. Cobb, Commissioner of Inland Fisheries and Game
Re: Offer of Central Maine Power Company

You ask as to the legality of accepting a gift of money from the Central Maine Power Company to build a rearing station, such gift to be in lieu of your not requiring fishways in the Wyman Dam and also in the new dam which is being built at Indian Pond.