

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

distinction between the Governor and his advisory Council, we conclude that the approval must be secured of both the Governor as supreme executive and the Council his advisory body. **NOTA.** By constitutional provision in the Commonwealth of Massachusetts, the Governor is President of the Council, but has no vote.

JAMES G. FROST
Deputy Attorney General

February 25, 1953

To H. M. Orr, Purchasing Agent

Re: Leases

We have your memo of February 17, 1953, and attached lease between the Congress Street Corporation and the Maine Employment Security Commission.

This lease, as indicated above, purports to have been executed by the Maine Employment Security Commission and bears the signature of L. C. Fortier, Chairman of that Commission.

The Attorney General and all members of his staff unanimously agree that the time has come when a more correct procedure should be followed in executing leases of grounds and buildings, etc., needed for the proper functioning of the various State departments.

We draw your attention to section 35 of Chapter 14 of the Revised Statutes of 1944, which reads as follows:

“The department of finance, through the bureau of purchases, shall have authority: . . .

“IV. To lease all grounds, buildings, office or other space required by the state departments or agencies.”

It is the intent of this statute to provide that the Purchasing Agent, the head of the Bureau of Purchases, shall execute leases on behalf of the State of Maine. To this effect see memo from this office dated January 28, 1942, from Frank I. Cowan, then Attorney General, to your bureau, in which it was stated that this office could not certify that the Secretary of State was the proper party to execute a lease for quarters to house the Portland office of Motor Vehicle Registration.

We realize that for a long period of time, by custom, such leases have been executed by the department head and approved by you and this office; but the mere fact alone of continued deviation from the law does not in any manner amend the law, and we are requesting that in future leases be executed by the proper party, namely the Purchasing Agent.

We would also recommend that the lease executed by the Maine Employment Security Commission under which it is acquiring new facilities for its Portland office be re-executed.

The first paragraph of leases should indicate the agreement between the lessor and the State of Maine, through the Purchasing Agent, Bureau of Purchases.

Leases of real property should be executed under seal.

JAMES G. FROST
Deputy Attorney General

March 2, 1953

To Herbert G. Espy, Commissioner of Education
Re: Exclusion from School

This office is in receipt of your memo of February 19, 1953, requesting interpretation of section 83 of Chapter 37, R. S. 1944:

“. . . and provided further, that the superintending school committee may exclude from the public schools any child whose physical or mental condition makes it inexpedient for him to attend. . .”

You ask: “(1) Might ‘physical or mental condition’ be interpreted to include habitual behavior which disrupts work of the classroom and which prevents the teacher and other pupils from carrying on their proper activities?”

“(2) What would be considered sufficient evidence to warrant the superintending school committee excluding such a child from school?”

In answer to Question No. 1, we might say that our interpretation of the above quoted provision of section 83 does not extend to the exclusion of children because of habitual behavior, but rather we would believe that section 59, subsection V would be more appropriate. This section reads as follows:

“Superintending school committees shall perform the following duties: . . .

“V. Expel any obstinately disobedient and disorderly scholar, after a proper investigation of his behavior, if found necessary for the peace and usefulness of the school; and restore him on satisfactory evidence of his repentance and amendment.”

It is the intent of section 83 of Chapter 37 to make it compulsory, with certain exceptions, for children of certain ages to attend school. There are times when for one reason or another, when, for instance, children are bearers of contagious diseases or display a condition of filth, they should of necessity be excluded from school. We believe that the section first above quoted is intended to mean that it will not be compulsory for children having particular physical or mental qualities to attend school, if it is inexpedient for them to do so, and that the superintending school committee may in such conditions exclude such children.

However, with respect to disorderly or disobedient children, we believe that subsection V of section 59 is more appropriate, if it is inexpedient *for the school* to have them attend.

In answer to Question No. 2, we refer you to an opinion written by Ralph Farris, then Attorney General, on June 21, 1946, which opinion, along