STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1951 - 1954

40 of the Revised Statutes which relates to a Commissioner of the Public Utilities Commission and the right to hold stock. That provision reads as follows:

> "No member or employee of said commission shall have any official or professional connection or relation with or hold any stock or securities in any public utility . . . operating within this state. . ."

"Operating within this state" is the equivalent of "operating under the laws of this state" and, in legal intendment, to the phrase, "existing under the laws of this state".

It would therefore be our opinion that a Commissioner should not hold stock in a public utility company doing business in this State or organized under and subject to the laws of this State.

ALEXANDER A. LaFLEUR
Attorney General

March 20, 1953

To Col. Francis J. McCabe, Chief, Maine State Police
Re: Out-of-State Residents Arrested for Speeding

We have your memo of March 17, 1953, in which you relate the following facts and ask whether or not an arrest for a misdemeanor can legally be made after a lapse of time such as occurred in this instance:—

"One of the officers in this troop stopped a resident of Canada for speeding. His intent was to obtain an immediate trial for this out-of-state resident. He asked the operator to drive a matter of a few miles to the nearest municipal court. Upon arriving in the city he found that both the Judge and the Recorder were out of town. The officer then informed the driver involved that he would have to place him under arrest and have him obtain bail, which was done

"The question has now come up as to whether or not the arrest was legal, since the officer did not inform the person involved until about 20 minutes after the offense occurred even though he was constantly within the officer's sight while driving to the court room."

There is no doubt that legally and morally an arresting officer is bound to act promptly at the time of the offense and would not be justified in permitting any time to intervene between the time of the offense and the time of the arrest which might not be interpreted to be a continued attempt on the part of the officer to make the arrest.

Under the factual situation outlined above, it is our opinion that the arrest could be legally made.

JAMES G. FROST
Deputy Attorney General

March 20, 1953

To Morris P. Cates, Deputy Commissioner, Education Department
Re: Leavitt Institute

We have your memo asking the following question:

"Is Leavitt Institute under legal joint board management, as clearly defined in the statutes, so that it can be classified as a public school for the purposes of participating in the federal vocational education program?"

This office issued under date of February 12, 1952, an opinion concurring with that of the legal staff of the Office of Education, from the office of the General Counsel, Federal Security Agency, in which opinion was set forth the formula, compliance with which on the part of an academy would place that academy under sufficient control of the town for it to be considered a public school for the purpose of vocational training subsidization.

You have set out at length the factual elements relating to the management of Leavitt Institute to assist us in arriving at our conclusion.

Without repeating these elements, it is the opinion of this office that the answer must be in the negative, for the following reasons:

To be in any sense a "public school", there must be some control by the duly elected representatives of the town that will equal, not in practice, but in law, the control as vested in the trustees of the school. In other words, this control must be vested in the representatives of the town in such a manner that it is recognized by the law, as distinguished from control that may currently be present by virtue of the fact that the by-laws of the academy are not enforced.

Thus the provisions of section 96 of Chapter 37 require a joint committee consisting of representatives of the town and an equal number of trustees of the academy, said committee to select and employ teachers, fix salaries, arrange the course of study, etc.

As distinct from this joint committee, the Executive Committee of Leavitt Institute, while composed of the superintending school committee of the Town of Turner, performs its functions subject to the approval of the Board of Trustees. Legally, thus, control of the activities of the Institute rests in the Board of Trustees.

Again, as a condition precedent to there being a joint committee, section 96 provides that the amount paid under the contract existing between the town and academy must equal or exceed the income of the academy for the preceding year. As indicated in your memo, this condition precedent has not been met, and there is no possibility that the town can, by a vote of the people, request that such joint committee be formed.

For these reasons it is our opinion that there is not sufficient control and supervision vested in the town to justify the classification of Leavitt Institute as a "public school".

We should like, also, to state that we are not convinced that the present situation would be helped by a determination by this office that Leavitt Institute was a "public school". On the contrary, it is our opinion that such an interpretation would result in the Town of Turner's bearing an additional expense not justified under our existing laws relating to General-Purpose Educational aid.

JAMES G. FROST
Deputy Attorney General