

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

December 14, 1954

To Scott K. Higgins, Director of Aeronautics
Re: State-owned Cars

. . . You ask for an interpretation of Chapter 379 of the Public Laws of 1951. You state that your Commission interprets said Chapter 379 as follows:

“That the Governor and Council are authorized to approve the purchase of State-owned cars by such heads of departments or members of Commissions as the Governor and Council may from time to time designate, in addition to those departments specifically named in the statute.

“Also, the Commission feels that it was the intent of the legislature that the Governor and Council be authorized to approve the purchase of State-owned cars, thereby making it unnecessary for individual commissions or departments to request legislative authorization.”

It is our understanding that you are asking us if we concur with your interpretation, and our answer is in the affirmative.

The legislature has, by the enactment of the above mentioned chapter, specifically permitted a few departments to possess automobiles for the travel of employees without having first secured the approval of the Governor and Council. In addition to such named departments, the legislature has indicated its permission for other departments or commissions to have automobiles for travel in the discretion of the Governor and Council.

JAMES GLYNN FROST
Deputy Attorney General

December 15, 1954

To Kenneth B. Burns, Business Manager, Institutional Service
Re: Educational Payments, Northern Maine Sanatorium

This is in answer to your inquiry relating to a family from which three children were admitted to the Sanatorium as tubercular patients and received educational assistance under the physically handicapped program of the Department of Education. Under this law the State pays the additional cost up to certain maxima after the town has paid its per capita cost, the theory being that the town shall bear the cost which it normally would if the child attended the local school, the State to assist if necessary, so that such child will not go uneducated because of unfortunate circumstances.

The complicating factor here is the movement of the family from Fort Fairfield, where they had evidently resided for eight years, to Caribou. This movement, it appears from the facts at hand, took place approximately two weeks before the admittance of the children to the Sanatorium. The children never attended the public schools in Caribou. Fort Fairfield denies liability on the ground that the family had moved to Caribou. Caribou denies liability on the fact that the children never attended school there.

Questions of movement of domicile or residence, whichever term you use, are oftentimes complicated. We are indeed unfortunate in not being able to hold

administratively some sort of hearing so that we could get the more important facts that usually decide such problems. We deal here only with what we have; the information is meager, to say the least.

It appears from what I have that Mr. X. moved his family, lock, stock and barrel, from Fort Fairfield to Caribou. He did it in the middle of the school year. The moment he arrived in Caribou with his family, in my opinion he created a duty on the Town of Caribou to provide facilities for the education of his children. The legal duty was attached. The fact that the children did not go to school is of no consequence, merely showing that Caribou did not properly enforce the truancy law. Legal rights may attach, although they are not exercised. The right of a child to attend our public schools is given by Section 39 of Chapter 37 and that is determined by the town in which his parents or guardian have a legal residence. Legal residence in relation to school purposes has been given a rather broad construction. In a Connecticut case, *Yale vs. School District*, 59 Conn. 489; 22 A. 295, the court in defining legal residence for school purposes gave a very broad definition, saying that if a child is actually dwelling in a school district so that some person there has the care of it and the child is within school age, the child must attend the public schools of that town. This case has been cited with approval by our Supreme Judicial Court in *Shaw v. Small*.

On the facts at hand it is my opinion that the Town of Caribou is liable for three times the per capita cost of pupils in that town during the school year under discussion. There may be some facts that may come out to change this opinion and I will readily do so; but I must state once again that we are definitely limited by our ability to get the facts which are so determinative of these questions. I understand that there is no pauper problem here.

If the Town of Caribou refuses to pay, I call your attention to the fact that moneys are paid by the State to Caribou. There can be a legal set-off, and if Caribou still insists it is not liable, it can always sue Fort Fairfield.

ROGER A. PUTNAM
Assistant Attorney General

December 16, 1954

To Raymond C. Mudge, Finance Commissioner
Re: Maine Maritime Academy

You have presented to this office under date of October 19, 1954, a memo from Earle R. Hayes, Secretary of the Maine State Retirement System, addressed to you, which reads as follows:

"The Board of Trustees of the Retirement System, at a recent meeting, asked me to confer with you in your capacity as Budget Officer, and the Attorney General or one of his Deputies with respect to the advisability or practicability of charging back to the Maine Maritime Academy the pro rata share of the cost of operation of the State Retirement Plan in so far as it applies to that institution in exactly the same manner as is presently being done with certain other so-called revenue accounts.

"The question was also raised by the Board as to whether or not the Maine Maritime Academy might not better be considered as in the category of a