

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

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

'Local Participating District' rather than as another State department or agency. . ."

As background to this memo it appears that the State Auditor's Report as of June 30, 1951, recommended that the Maine Maritime Academy be charged their pro rata share of normal and approved liability contributions, annual valuation and administrative costs. The Retirement System noted that such recommendation appeared to be in conflict with an opinion of the Attorney General dated June, 1949, in which the Maritime Academy was designated as a State Agency. In return, the State Auditor suggested that the intent of the Attorney General's opinion was merely to the effect that the Academy was a State Agency and there was no prohibition against its being charged for its share of contributions to the Retirement System.

As a result of the above mentioned opinion of the Attorney General, it appears that the Maine Maritime Academy began to participate in the State Retirement System as a State Agency and not as a participating local district. Entrance as a participating local district would have made it mandatory upon the Academy to pay the costs mentioned in Mr. Berry's recommendation.

We do believe that the Academy, receiving substantial sums from the State, as it does, in the way of appropriations, could much more appropriately be considered an Agency of the State than it could a local participating district, which latter classification generally embraces those instrumentalities of the State which receive no appropriation from the General Fund, this from a practical standpoint and in addition to the legislative act which expressly declared the Academy to be an Agency.

However, we do not think at this late date that it is necessary to re-examine the Academy's status as agency or local participating district for the purpose of determining whether or not it might be charged with its share of contributions, valuation, and administrative costs, because such costs may be imposed upon it under the provisions of Section 14-VII of Chapter 60:

"State contributions. The board of trustees shall submit budget estimates to the state budget in accordance with the provisions of section 10 of chapter 14. These estimates shall show the total requirements for the pension accumulation fund and for the expense fund for the ensuing biennium. These amounts shall be broken down in such a way as to permit the proper allocation of costs among the general fund of the state, the general highway fund and such other funds as it may be found practicable by the state budget officer to charge with their proportionate share of the cost. The amount determined as due from the general fund shall be included in the appropriation bill transmitted to the legislature by the governor with the budget document. Payments to the retirement system of the amounts appropriated for the pension accumulation fund and for the expense fund shall be made in quarterly instalments on the 1st day of July, October, January and April."

This section, then, contemplates that in the discretion of the State Budget Officer, if he finds it practicable, the proper costs may be allocated so as to charge particular funds with their proportionate share of the cost.

We express no opinion as to the advisability or practicability of making such charge, as we believe this is an administrative function.

JAMES GLYNN FROST
Deputy Attorney General

December 21, 1954

To Kenneth B. Burns, Business Manager, Institutional Service
Re: Bath Military and Naval Children's Home

Your memorandum relating to the advisability of striking out the word "gratuitously", as found in Section 174 of Chapter 23, R. S. 1944, received.

The Military and Naval Children's Home, Bath, was declared to be a State institution by the provisions of Section 1 of Chapter 254 of the Public Laws of 1929, at which time the word "gratuitously" appeared in the Public Laws for the first time. It has been in our statutes ever since.

Section 3 of this Act further ordered the trustees to turn the trust fund over to the State Treasurer. I will refer to this fund later.

Section 4 of the Act repealed all inconsistent Acts relating to the school, but is not material here.

It is the opinion of this writer that the legislature has the right to strike out the word "gratuitously" and thus make relatives legally liable to pay, subject to assessments of costs within reasonable limits, for the board, care and education of the inmates of the institution. The legislature has always reserved the right to amend the charters of corporations since 1831. This is, however, not a corporation change in the charter, but more or less a change in what has now become a State institution.

The only problem in striking out the word "gratuitously" arises from the possibility that somebody may have conveyed a gift to this school on the condition that it should always be maintained for the purpose of rearing and educating children gratuitously. Along this line we have attempted to check, first the trust fund involved and second the real estate involved.

In 1931, Frank I. Cowan, Esquire, later Attorney General of the State of Maine, did an exhaustive investigation into the history, background and handling of trust funds held by the State of Maine for its various institutions. This Report is in printed form and I refer to page 18 thereof, section XIII, entitled, "State Military and Naval Children's Home". Mr. Cowan found out funds which cannot now be traced, having a book value of \$16,000. The funds which came to the State under the provisions of Chapter 254, Public Laws of 1929, had a value at that time (1931) of \$12,261.62. Mr. Cowan states and I quote, "This fund has no known conditions attached, save that it is for the benefit of the Military and Naval Children's Home. It is fully segregated." In view of Mr. Cowan's exhaustive study I do not feel that it is necessary to retread that ground. We will assume, therefore, that this fund is without condition. There any change in the statute would have little, if any, effect.

The question arose in mind whether or not the property where the Bath Military and Naval Children's Home now is situated might have been conveyed