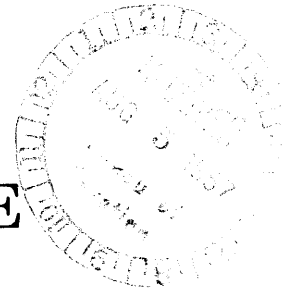
STATE OF MAINE



REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1955 - 1956

You ask what procedure should now be followed to have this matter properly presented to the court.

We feel that the matter should not be again presented to the trial court or a municipal court, but that the County Attorney should handle the case by way of indictment before the Superior Court. In that way there will be no question of jurisdiction of the trial court.

JAMES GLYNN FROST
Deputy Attorney General

January 18, 1955

To K. B. Burns, Business Manager, Institutional Service

Re: Repairs at Pownal State School

I have your inquiry of January 17th relating to Chapter 209, Resolves of 1953, which provided funds for certain emergency repairs at Pownal State School.

We note that in the body of this Resolve there is a total sum of money appropriated from the General Fund in the amount of $97,700. Below that appropriation are set out certain sums against certain repairs to be made, for instance, the sum of $4500 was allocated to repair the old section of the water reservoir, while the sum of $14,000 was given to complete the kitchen.

The question arises as to whether the sum of money saved under one subdivision of this appropriation may be used to supplement the funds in another subsection where the funds appropriated therefor have proved insufficient.

It is our opinion that the set-up on this Resolve shows a legislative intent to line-budget the total sum. That being true, the money must be expended only for the purposes indicated and cannot be transferred from one to another. Only the legislature can correct this deficiency.

ROGER A. PUTNAM
Assistant Attorney General

January 27, 1955

To Ray L. Littlefield, Trial Justice, Scarboro

Re: Suspension of Driving Licenses

We have your letter of January 22, 1955, in which you ask for an interpretation of Section 166 of Chapter 22 of the Revised Statutes of 1954. That section reads as follows:

> "In addition to any other penalty provided in this chapter and imposed by any court or trial justice upon any person for violation of any provision of this chapter, the court or trial justice may suspend an operator's license for a period not exceeding 10 days, in which case the magistrate shall take up the license certificate of such person, who shall forthwith surrender the same and forward it by registered mail to the secretary of state. The secretary of state may thereupon grant a hearing and take such further action relative to suspending, revoking or restoring such license or the registration of the vehicle operated thereunder as he deems necessary."

You ask specifically if the additional penalty of suspension of license is subject to appeal the same as the original sentence. With respect to this question we believe you ask if the suspension of the license is vacated as is the penalty in the usual case of a municipal court when appeal is taken.

While this office does not customarily give opinions to any but those persons included under our statutes, we should be pleased to give you the reaction of this office to the question in hand because of our past deliberations on this same matter.

While there is some dissent in this office to the proposition that such suspension is a penalty and is vacated on appeal, it is the general opinion that such is true, that in effect the suspension of the license amounts to a penalty imposed by the municipal court and as such is vacated when the accused appeals from the decision or sentence of the lower court. It has certainly been the opinion of the Secretary of State, because in every such case the license is returned forthwith to the operator when he has appealed from the decision of the trial court.

We think it wise that the imposition of the penalties be as uniform as possible throughout the State and that what appears to be customary practice should be adhered to when possible.

This office has advised the State Police that it would be proper for them to consider such suspension as an additional penalty.

JAMES GLYNN FROST
Deputy Attorney General

February 7, 1955

To Earle R. Hayes, Secretary, Maine State Retirement System

Re: Eligibility of Certain Former Teachers

We have your memo *re* retirement of school teachers, which reads as follows:

"Some little time ago you sat in on a conference with the Board of Trustees of the Retirement System with respect to several cases of the older group of teachers who have not taught for several years, have attained age 60 or more but never did complete the so-called minimum of 25 years of creditable teaching service in the schools of Maine which automatically provides a teacher in that particular category with a guaranteed minimum retirement benefit at attained age 60.

"The question of whether or not these individuals are now eligible to apply for and receive retirement benefits was the major question discussed, as you will recall, and it was all discussed in the light of the fact that the words 'in service' had been deleted from the law.

"I am wondering if you have arrived at any conclusions to the point at least, where you could give us an opinion as to the eligibility or non-eligibility of these particular cases for benefits."

Conversations with you have amplified the above information and the following facts have been added: that the teaching experience of the teachers concerned varies from 10 to 20 years, that a few have been contributors since 1945 and have left their contributions in. It would appear that the question involves teachers who had not qualified for retirement under the provisions of Chapter 64, Sections 6-XIII through XV, because they had not gathered the minimum of 25