MAINE STATE LEGISLATURE

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April 8, 1955

To Herbert G. Espy, Commissioner of Education
Re: Legal Rights of Towns to Construct School Buildings

We have your memorandum of March 28th. . and incorporate the initial statement and your question:

"One of the important responsibilities of this Department is provision of advice and assistance to local officials regarding plans for the financing and construction of school buildings. In that connection the following question occasionally arises:

"Does the establishment of a school district remove from a component town the legal right to borrow on its own for the purpose of building a school building or to elect a school building committee with power to enter into contract for the construction of such a building?"

We regret that we are unable to provide you with an opinion in regard to the foregoing question.

In the first instance, we do not believe that it is the duty of your department to advise and assist local authorities in regard to the financing of school buildings. The Commissioner is given authority to set up standard plans under Section 25 of Chapter 41, R.S. 1954, and, of course, any alteration or expense in regard to the reconstruction or remodeling of any school building, the expense of which exceeds $500 must be approved by the Commissioner of Education and the Bureau of Health.

There is further reason for not answering. We have made a superficial review of some of the School District Acts that have been passed in recent years, since such Acts were declared legal in Kelley v. The School District, 134 Me. 415. These Acts differ in many respects from the Act which was declared valid in the Kelley case, and many times the issue presented here may be determined by the very language of the Act, so that a general rule cannot be given to an administrative officer to guide him in his advice to local officials.

In this State financing has always been done at the local level, reserving, of course, the creation of the Maine School Building Authority which is a State agency and therefore is on a different plane than the School Districts of the towns. Some States provide that the Department of Education or the Attorney General shall have the duty of approving the bonds of town and city school districts. Such has never been the case in Maine, and therefore any opinion given by us would be advisory merely, the burden always being cast upon the counsel for the district or on the purchaser or underwriter to determine in any given case whether the bonds are legal obligations of the city or town or district.

We may, however, draw some general observations.

We call your attention to the fact that the Maine School Building Authority saw fit in 1953, by virtue of Section 5 of Chapter 290 of the Laws of 1953, to add the following words,

"Any town, notwithstanding the prior creation of a school district coterminous with said town. may contract with the Authority."

The counsel for the Authority evidently figured that there was enough doubt as to whether the town could erect a building where a coterminous district existed to await legislative approval.

There is some dictum in the Kelley case above cited which appears to sustain the proposition that a town may carry on the building of new schools despite an existing coterminous district. This is pure dictum; we have no direct case in Maine in point.

We can do no more than call this to your attention and to the attention of counsel at the local level, so that he can make his analysis on the school district bill which he has before him.

Frank F. Harding
Attorney General

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