

MAINE STATE LEGISLATURE

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August 17, 1955

To Fred M. Berry, State Auditor
Re: Cobb Agreement, Town of Lincoln

Answering the questions propounded in regard to the Cobb Agreement:-

1. You ask, "Has the Town of Lincoln the authority to accept this fund and has the School District the authority to turn said fund over to the town?"

The agreement provides for income only, but the benefits involved could, under the circumstances, be properly and legally transferred to the Town of Lincoln, as was done.

2. You say, "The letter of Mr. Clifford, Town Manager, refers to the sale of Metropolitan Building Company stock. I presume this stock was a part of the original bequest, therefore, what authority is there for the sale?"

It appears that the trustee, Town of Lincoln, made sale of the stocks contrary to the original agreement, after being told by certain counsel that it would be proper under the prevailing circumstances. While such sale was contrary to the agreement and may have violated good faith with the Cobbs, the agreement was separate from the stock, and so the stock could be transferred, however unlawfully or contrary to promise. However, it could well appear that the present holding of stocks, held in lieu of the original stocks and purchased with the proceeds could be taken up by the donors' representatives for breach of trust.

3. You say, "From the proceeds of the sale of the Metropolitan Building Company stock it appears that other stock, not legal under Maine Statutes, was purchased. What legal right is there for this transaction?"

If the Town owned the original stocks it could not exchange them but for investments legal in Maine. Not owning them, it has, for purposes of continuing their benefits to the school, exchanged them for others. If consideration is given to the original agreement with the Cobbs, these stocks received in such exchange are subject to the trust and are not in fact owned by the Town of Lincoln during the fifty-year trust period, the Town having only the right to receive and pass over the income. The Town not in fact having ownership either by itself or as trustee, it would not be competent to compel sale for investment in Maine's list of authorized securities.

While the action taken by the Town would appear to be contrary to promise and may well have jeopardized the benefits being received from the Cobb Agreement, that agreement was a private transaction not involving the stock itself, as far as the State is concerned, but only the earnings or dividends, which, so far as appears, are properly applied to the school. The income only was covered by the agreement

and that, it is assumed, is being applied as well as may be under the unusual circumstances. It may be that any action that the State could take now would cause a forfeiture of the benefits beyond the desires of the donors and not in the public interest.

We appear to have the Town, trusted and authorized only to hold and not to own the stocks provided, breaching that trust and selling without sanction the stocks entrusted to it to hold. The Town, of course, does not gain ownership that way and may well be called to account by the representatives of the donors, should they care to do so.

Neal A. Donahue
Assistant Attorney General

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