

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

November 8, 1956

no

To Kermit S. Nickerson, Deputy Commissioner of Education
Re: Legal Authority for the State to Join with Towns in School
Building Construction

We have your memorandum of November 6th in which you state that the towns of Prentiss and Webster are interested in having the State, which proposes to erect a new building in unorganized territory in Kingman, join with them in constructing a community school in the same location. Your question is:

"Do our present laws, Sections 167 to 175 (Chapter 41, R.S. 1954) and 112 to 121, permit the state to join with the towns of Prentiss and Webster to construct and operate such a school?"

We feel that we must answer this question in the negative.

A reading of Sections 167-175 discloses that no such arrangement was contemplated by the legislature in setting up the unorganized territory capital working fund. The problems which would arise, if the State should join with two unorganized plantations, particularly with the apportionment of costs, would not be answered by the statute.

Turning to Sections 112-121 we find that there is a definite limitation on the formation of such a district. Section 112 provides:

"The inhabitants of and territory within 2 or more towns may form a community school district which shall be a body politic and corporate by proceeding as follows: . . ."

The word "towns" may include cities and plantations, unless otherwise expressed or implied (subsection XIX, Section 22, Chapter 10, R. S. 1954.)

Again we are faced with the proposition that the State has not been mentioned in this act, and the general rule is that a State is not included within a statute unless expressly named therein.

You ask further, in case our answer is in the negative, what changes in the law we would recommend to permit this action.

There are two possibilities. One is some form of general enabling act which would allow the joinder of the State with municipalities to construct and operate community schools, where the State has a primary duty to erect and operate, as it does in unorganized territory. The other way is to have some form of special legislation, perhaps a special school district, in which the State would be a party. The problem of apportionment of building costs and operational costs is always a stumbling block, and by the use of special legislation one could work out a formula which would be agreeable to everyone and which would handle the situation presented. We find that the towns themselves are not satisfied with the basic formula found in Sections 112-121 and are repeatedly asking the legislature to change the apportionment formula in their community school districts to fit their particular situations.

rap/c

Roger A. Putnam
Assistant Attorney General