

MAINE STATE LEGISLATURE

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November 15, 1956

To: Kermit S. Nickerson, Deputy Comm. of Education

Re: Legality of Advance Payment of Subsidy - MSBA Lease Agreements

An opinion is desired on the legality of advance payment of subsidy under Section 242 of Chapter 41 directly to the Maine School Building Authority or its trustee on 1956 lease agreement payment prior to the December 1, 1956, deadline if the municipal officers of any leasing town requests that such payment may be made.

The basic premise upon which the MSBA bonds were sold is that the state subsidy could be called upon to pay the bond owner if for any reason the leasing town should be in default. See Section 249 of Chapter 41, Revised Statutes of 1954.

After the authority had been in operation for a short period of time, it became apparent that a leasing town could receive pre-payment of its subsidy on and after September 15th by virtue of Section 242 of Chapter 41 and thus invade the security binding these bonds. In order to cover this apparent oversight, an amendment to Section 242 in 1955 provided that the Commissioner could not pre-pay any amount which would not leave sufficient amount to meet the town's obligation to the authority under any existing lease agreement with the authority.

There is no provision except in the case of default where the money may be paid directly to the authority or its trustee. Without statutory authority it is our opinion that the municipal officers would not have authority to assign the subsidy payment to the Maine School Building Authority, its trustee, or to any other person, firm, or corporation.

If it be the Authority's desire to allow such assignment, appropriate legislation should be drafted and introduced at the coming legislative session.

Roger A. Putnam
Assistant Attorney General