

MAINE STATE LEGISLATURE

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December 31, 1956

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To Kermit S. Nickerson, Deputy Commissioner of Education
Re: Withholding Town Subsidy

In your memo of December 19, 1956, you state that the Ashland school committee has approved the use of school time and school buildings for denominational or sectarian teaching by a church official.

You ask if the Department of Education can withhold State subsidy for the Town of Ashland under Section 31 of Chapter 41, R. S. 1954, which states in part that failure in any way to comply with the law prescribing the duties of towns may cause subsidy to be withheld.

Answer. No.

Section 147 of Chapter 41 provides in part:

"On a day in each week, to be fixed by the board, it may excuse such pupils for at least 1 hour for the purpose of attending their respective places of worship, or some other suitable place, there to receive moral instruction in accordance with the religious faith of said pupils."

It is our opinion that under the provisions of the above quoted law religious instruction must be given off the school premises. It has long been the opinion of this office, and the law in all States of which we have any information, that sectarian religious instructions are not a part of the educational program of the State.

This alone, however, does not give to the Department of Education the right to withhold the State subsidy from a town which has such a program in its public schools. At most it is a problem which the department can present to the Governor and Council for consideration. Section 31, supra, reads:

"When the governor and council have reason to believe that a town has neglected to raise and expend the school money required by law, or to employ teachers certified as required by law, or to have instruction given in the subjects prescribed by law, or to provide suitable textbooks in the subjects prescribed by law, or faithfully to expend the school money received from the state or in any way to comply with the law prescribing the duties of towns in relation to public schools, they shall direct the treasurer of state to withhold from the apportionment of state school funds made to that town such amount as they may deem expedient, and the amount so withheld shall not be paid until such town shall satisfy said governor

and council that it has expended the full amount of school money as required by law and that it has complied in all ways with the law prescribing the duties of towns in relation to public schools; and whenever such town shall fail, within the year for which the apportionment is made, so to satisfy the governor and council, the said amount withheld shall be forfeited and shall be added to the general fund of the state."

There is within the above law an area in which the Governor and Council would have a discretion to exercise in arriving at a decision, and we therefore do not attempt to anticipate the action of the Governor and Council with respect to such a situation.

James Glynn Frost
Deputy Attorney General

jgf/c