STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

hath not accomplished its purpose. For if the vote of a town once accomplishes its purpose, works out the intended result and hath spent its force, it cannot be reconsidered and taken back.

"A town is free to act within its legal scope as it pleases. It may take one action in one direction today and in another tomorrow, provided it does not impair intervening rights. There is a wide difference, however, between reconsidering action that has once taken effect and worked its result, and, voting action to renew the original state of affairs by original and new proceedings."

I would like to point out *Knapp v. Swift River Community* School District, 152 Me. 350 at 353, which is a comparable fact situation. Chief Justice Williamson stated in the opinion:

". . . If the right of the District to do business depends from day to day upon the votes of town meetings, first granting, then taking away, and perhaps again granting rights, it is apparent that a District, duly organized, would not be worthy of the name of a quasi-municipal corporation with rights and powers, duties and obligations of its own."

In the instant situation all the necessary steps have been taken for the formation. The school administrative district is created by legislature and governed by the statutes. Once the certificate of organization is issued, Section 111-G of Chapter 443, Public Laws of 1957, provides that such issuance shall be *conclusive* evidence of the lawful organization of the School Administrative District. (Italics supplied) Section 111-P of Chapter 443, Public Laws of 1957, provides the means for withdrawal from a district.

To reiterate, any action by the Town of Perham at this time would be ineffective.

GEORGE A. WATHEN
Assistant Attorney General

July 31, 1958

To Robert M. Huse, Administrative Assistant to the Governor

Re: Removal of Humane Agents

. . . You inquire if anything can be done concerning the complaints against a State Humane Agent.

We would suggest three possibilities with respect to the problem:

1) We have a strong feeling that the matter could be taken care of, if the judge himself should instruct the humane agent not to bring any further matters before his court;

2) It is possible that the Governor might write and request that the State humane agent resign;—the Governor might do this in his own pleasant way and obtain results;

3) Such agent could be removed from office by the Governor and Council.

Under the provisions of Chapter 140, Section 23, R. S. 1954, the tenure of office of State humane agents is not set forth.

Article IX, Section 6, Maine Constitution, provides:

"The tenure of all offices, which are not or shall not be otherwise provided for, shall be during the pleasure of the Governor and Council."

Tenure of offices "not otherwise provided for" includes those contained in Chapter 11, Section 5, R. S. 1954:

"All civil officers, appointed by the governor and council, whose tenure of office is not fixed by law or limited by the constitution, otherwise than during the pleasure of the governor and council, except ministers of the gospel appointed to solemnize marriages and persons appointed to qualify civil officers, shall hold their respective offices for 4 years and no longer, unless reappointed, and shall be subject to removal at any time within said term by the governor and council.

"All such officers so appointed and all state employees shall be citizens of the United States of America."

State humane agents, their tenure not being provided for in the appointing act, are embraced by Section 5 of Chapter 11 (State officers appointed by the Governor and Council) and hold office for 4 years, and shall be subject to removal at any time within said term by the Governor and Council.

Removal of such officer must be by the Governor with the advice and consent of the Council (Opinion of the Justices, 72 Me. 542).

We are therefore of the opinion that if the Governor and Council feel that the situation justifies such action, then by their concurrent action the Governor and Council may remove a State humane agent from office.

Notice of the action taken by the Governor and Council should be sent to the State humane agent and recorded in the office of the Secretary of State.

JAMES GLYNN FROST
Deputy Attorney General

August 1, 1958

To Wolcott H. Fraser, Deputy Secretary of State

Re: Voting Status of National Guardsman Receiving Pauper Supplies.

We have your memo of July 21, 1958, which reads as follows:

"Section 2 of Chapter 3 of the Revised Statutes prohibits a pauper from qualifying as a voter.

"Section 10 of Chapter 94 of the Revised Statutes excepts certain soldiers, sailors and marines from being classed as paupers."

"Does a member of the National Guard become a pauper upon receipt of pauper supplies and thus become ineligible to vote?"

Answer. It is our opinion that a member of the National Guard who does not comply with the provisions of Section 10, of Chapter 94, in not having served in the Army, Navy or Marine Corps in the War of 1861, the War with Spain, World Wars I and II, or the Korean campaign and who has not received an honorable discharge from said service, would become a pauper upon receipt of pauper supplies and thus become ineligible to vote.