

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

September 18, 1958

To Kermit S. Nickerson, Deputy Commissioner of Education

Re: Medical and Health Inspections

I have your request for an opinion based on the following questions:

"1. May a parent refuse to have a child examined by a school physician employed by the school committee? If so, what recourse does the school have to protect other children?

"2. With reference to Sec. 62 of Ch. 41, may a parent refuse to have his child submit to a visual or auditory test? Can a parent have these tests made outside the school by competent personnel and report to the school in lieu of the school examination?"

Sec. 58 of Ch. 41 provides that it is the duty of every school physician to make a prompt examination and diagnosis of all children referred to him as provided in Sections 57 to 65. Therefore, in the case of absence on account of sickness or notice of disease, there seems to be nothing in the statutes which requires compulsory complete physical examination of students before entering school. Sections 54, 60, 61 and 62 provide means for the protection of the other children.

In reference to your question, Section 62 states in part:

"The superintending school committee or school directors of administrative units shall cause every child in the public schools to be separately and carefully tested and examined at least once in every school year to ascertain whether he is suffering from defective sight or hearing, or from any other disability. . . . Tests of sight and hearing shall be made by the teachers or the school physicians."

A parent cannot refuse to allow his child to submit to these examinations, but a degree of cooperation from the child is necessary for an adequate exam, so as a practical matter, I would suggest acceptance of a competent physician's report in lieu of the school teacher or physician's examination.

GEORGE A. WATHEN
Assistant Attorney General

September 18, 1958

To Maurice C. Varney, Director of Vocational Education

Re: Liability Coverage of Firemen employed as Instructors

You make inquiry about liability insurance protection for itinerant fire service training instructors. You say that the Department of Education, in its fire service training programs, employs on a contractual basis approximately 35 professional firemen as instructors in regularly organized schools of from 10 to 25 hours, and the question has arisen as to what protection against injury these men have.

It would seem that they are protected, while in your employ, under the terms of the Workmen's Compensation Act. There is an exception in the Act relating to any person "whose employment is not in the usual course of the business, trade or occupation of his employer"; but your business is education

and these employees are engaged with you for educational purposes, as teachers. Their terms of employment are brief but otherwise seem to be regular, and I think that the protection of the Workmen's Compensation Act would apply to them.

NEAL A. DONAHUE
Assistant Attorney General

September 24, 1958

To Roland H. Cobb, Commissioner of Inland Fisheries and Game

Re: Raft or Boat as Stationary Blind

. . . You ask for an interpretation of the third paragraph of Section 89 of Chapter 37 of the Revised Statutes of 1954, which reads as follows:

"No artificial cover which is termed stationary blind, or parts thereof, used for hunting purposes shall be left or allowed to remain in the waters of Merrymeeting bay between one hour after legal shooting time and one hour before legal shooting time."

You ask if a raft or boat fitted as a blind would be prohibited in Merrymeeting Bay between the hours fixed in this paragraph:—one hour after legal shooting time to one hour before legal shooting time.

For the purposes of enforcement of your laws we believe you should consider a raft or boat fitted as a blind to be an "artificial cover which is termed stationary blind", and as such should not be "left or allowed to remain in the waters of Merrymeeting bay between one hour after legal shooting time and one hour before legal shooting time".

JAMES GLYNN FROST
Deputy Attorney General

September 24, 1958

To Perry D. Hayden, Commissioner of Institutional Service

Re: Transfer of Voluntary Patient under Interstate Compact on Mental Health.

We have your memo of September 19, 1958, which reads as follows:

"This Department has recently received a request from the Massachusetts Department of Mental Health to transfer a mental patient from the Northampton State Hospital to a state hospital in Maine. Massachusetts is a member of the Interstate Compact on Mental Health and a transfer can be effected if . . . there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated and improved thereby. . . The factors referred to . . . shall include the patient's full record with due regard for the location of patient's family, character of illness and probable duration thereof, and such other factors as shall be considered appropriate." (Section II of Article III of the Interstate Compact on Mental Health, Chapter (231), Public Laws of 1957).

"The patient involved was not committed to the Northampton State Hospital but is on a voluntary status and has himself requested the transfer so that he may