

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

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budget purposes, this would in effect freeze every unit as of that date. The effect of this "freezing" would mean that any change in the make-up of an administrative unit would not be reflected in its share of subsidy until a new computation was made. This would affect the withdrawal and addition of a municipality to a School Administrative District or Community School District as well as the formation of such a district.

It is my opinion, in keeping with the declaration of policy and the intent of the Legislature that the Commissioner must apportion subsidies to such units as have been created or changed during the biennium, and make such additional computations as required.

GEORGE A. WATHEN
Assistant Attorney General

January 26, 1959

To: Kermit Nickerson, Deputy Commissioner of Education

Re: School Administrative Districts — Agency of the State

I have your request for an opinion concerning whether or not School Administrative Districts are agencies of the state for the purpose of receipt of monies from federal grants under Public Laws 815 and 874.

In my opinion a School Administrative District would qualify for grant for the same reason that a municipality qualified.

Section 236 of Chapter 41 of the Revised Statutes of 1954 defines an administrative unit "including all municipal or quasi-municipal corporations responsible for operating public schools".

Section 111-F defines a School Administrative District as a body politic and corporate. A School Administrative District is a quasi-municipal corporation set up for the limited purpose of providing education for the children of two or more municipalities. Therefore, it is an agency of the state and eligible for the federal grant under the terms specified in your memo. (Also see *Kelley v. Brunswick*, 134 Me. 414).

GEORGE A. WATHEN
Assistant Attorney General

February 9, 1959

To: Honorable Clinton A. Clauson, Governor of Maine

Re: Beach Erosion Survey

We are returning herewith the letter of Mayor Deschambeault dated January 12, 1959, and the attached copy of an application of the City of Biddeford to the Federal Government for a Beach Erosion Survey on certain portions of shores of the City of Biddeford, which papers were submitted to you for your approval under the provisions of Chapter 90-A, Section 8, Revised Statutes of 1954.

For convenience in considering this problem, we set out in its entirety said Section 8: —

“Sec. 8. Projects for improving navigation and preventing erosion. A municipality may acquire real estate or easements by the condemnation procedure for town ways as provided in chapter 96, and may contract with the State and Federal Governments to comply with requirements imposed by the Federal Government in authorizing any project which has been approved by the Governor for improving harbor and river navigation or preventing property damage by erosion or flood.

- I. Two or more municipalities may act jointly in performing the operations authorized by this section.
- II. The Governor, with the advice and consent of the Council, may do the following with regard to such a project:
 - A. Designate a state agency to make any investigation considered necessary.
 - B. Provide for the payment by the State of not more than one-half of the contribution required by the Federal Government, when an appropriation has been made for it by the Legislature.
 - C. Make an agreement with the Federal Government to hold and save it harmless from resulting claims.”

It can be seen from the above-quoted statute that the Governor’s approval relates to projects for the *actual* improvement of harbor and river navigation, or the prevention of property damage by erosion or flood.

For instance, note the power given the municipality to condemn property for the purpose of carrying on the project. Such condemnation might be necessary in case the work is to be carried on on private land and the State was required to hold the Federal Government harmless from claims as provided by paragraph C of Section 8. We would note that for all such actual projects carried out in the past, the State has been required to execute such assurances.

The present application for the City of Biddeford is not for such a project, but for a survey, the results of which will determine whether or not the project such as is contemplated by Section 8 is necessary or practicable. It is for these reasons that we believe the work has not reached the state where the Governor’s approval is required or proper.

Our opinion on this matter is based on the statute above quoted, the letter of Mayor Deschambeault, and the copy of the city’s application to the Federal Government, along with the Mayor’s statement that such application is all the information he has on the matter.

If there are any other facts that have not been drawn to our attention, we would be happy to consider them.

JAMES GLYNN FROST
Deputy Attorney General