

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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Chapter 83 referred to in your memorandum merely authorizes the State Board of Education to inspect and approve standards for summer schools within the State.

Another question which was asked in your memorandum of May 27, 1959, was whether or not a summer school operated by a superintending school committee could charge a fee. Please refer to my memorandum of May 5, 1959, concerning legality of tuition to resident students attending a public school during the summer.

It is my opinion that in one instance we are dealing with a public school and no tuition can be charged to resident students and in the other situation, a private school which may charge tuition.

I have not attempted to answer your question relating to the amount of the fees charged by a private school since that is their own concern. Neither have I attempted to explain how a town may legally lease or rent its school property to a private organization since that is a matter within their province.

GEORGE A. WATHEN
Assistant Attorney General

June 9, 1959

To: Harold I. Goss, Secretary of State

Re: Trailways of New England, Inc. Erroneously Registered as Foreign Corp.

You have referred to us the letter of Trailways of New England, Inc., a corporation which states that it is a public service corporation and further states that it had erroneously registered with the office of the Secretary of State under the provisions of Chapter 53, R. S. 1954, as a foreign corporation doing business in this state. The said corporation would like to correct the erroneous registration. Trailways makes the following statement:

“Trailways of New England, Inc. is a common carrier of passengers for hire by motor bus duly certified by the Maine Public Service Commission as to its intrastate operations within the State of Maine all pursuant to Chapter 48, Section 1 et seq., of the Revised Statutes. As such, Trailways of New England, Inc. is a public service corporation within the purview of Section 127, Chapter 53, and, therefore, is expressly made exempt from the operation of Chapter 53.”

Chapter 53, section 127, Revised Statutes of 1954, reads as follows:

“Every corporation established under laws other than those of this state, for any lawful purpose, other than as a bank, savings bank, trust company, surety company, safe deposit company, insurance company or *public service* company. . .” (emphasis supplied)

A public service company is a company holding itself out to render service to the public for compensation. The primary purpose for the exclusion of such companies from the requirement of registration under the

provisions of section 127 et seq. of Chapter 43, is because such companies must observe rules in the conduct of their business with the public laid down by some state department or agency other than the Secretary of State. In the case of a common carrier, such carrier would be regulated by the Public Utilities Commission. Trailways of New England, Inc. is registered by our Maine Public Utilities Commission as a common carrier of passengers for hire by motor bus.

A common carrier of passengers for hire by motor bus duly certified by the Maine Public Utilities Commission is a public service company and is exempt from filing under the provisions of sections 127-135 of Chapter 53.

When such a company erroneously complies with the said sections and likewise erroneously pays a fee, such fee can be refunded only by legislative act. We cannot find any statutory authority permitting the Secretary of State to make such refund and, absent such statutory authority, the Secretary of State is powerless to make such refund.

We would suggest that you accept the affidavit supplied by the company, place it on file so as to record the action that has taken place, and to charge no fee for same.

JAMES GLYNN FROST
Deputy Attorney General

June 9, 1959

To: Francis H. Sleeper, M. D.
Superintendent
Augusta State Hospital
Augusta, Maine

Dear Dr. Sleeper:

This is in response to your request to this office to examine two forms of "Permission for Operation", one entitled A — the other B.

Form A is presently in use in your hospital and form B is suggested by certain of the doctors who believe that expressed authorization of the administration of anesthetics is necessary in order to prevent suits for malpractice.

The general rule seems to have become well established that before a physician or surgeon may perform an operation upon a patient he must obtain the consent either of the patient, if competent to give it, or of someone legally authorized to give it for him, unless immediate operation is necessary to save the patient's life or health, although under exceptional circumstances consent may be regarded as having been impliedly given. 76 A L R 562.

We would point out also, that the general rule for the action for operating without consent seems usually to be regarded as one for assault or trespass rather than for negligence.

We think a consent should be in broad general terms permitting the surgeon to do what he deems, in his judgment, best for the patient.