

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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those rules or regulations. We must necessarily base our opinion as to the validity of Rule No. 69 on the authority given to your Commission by our own state statutes and the ruling case law. However, for purposes of comparison and as a matter of information, we cite a Delaware statute which seems most nearly to set forth the proper authorization for such a regulation as the one in question.

Delaware Code Annotated, Volume 2, Title 4, Chapter 3, Section 304, Duties and Powers:

“The duties and powers of the Commission shall be to —

. . . .

- (2) *Establish by rules and regulations an effective control of the business of manufacture, sale, dispensation, distribution and importation of alcoholic liquors within and into the State of Delaware, including the time, place and manner in which alcoholic liquors shall be sold and dispensed, not inconsistent with the provisions of this title.*

. . . .” (Emphasis supplied)

There is no like authority contained in the Maine law.

We are of the opinion that the adoption of Rule No. 69 is beyond the scope of any authority contained in Chapter 61 and would therefore be invalid.

Very truly yours,

FRANK E. HANCOCK

Attorney General

September 25, 1959

To: Kermit Nickerson, Deputy Commissioner of Education

Re: Payment of Advance Subsidy to School Administrative District #3

I have your request for an opinion concerning whether or not the Commissioner has authority to make an advance payment of the subsidy to School Administrative District #3 in view of the pending litigation.

Referring to Section 242 of Chapter 41, Revised Statutes of 1954, if the Commissioner is satisfied that a financial need exists and with approval of the Treasurer of State, he may pay up to two-thirds of the estimated subsidy provided a sufficient amount is available to meet any obligations to the Maine School Building Authority.

Although there is a petition in the nature of quo warranto pending before the Waldo County Superior Court, questioning the authority of the school directors of School Administrative District #3 to hold their offices and the exercise of the franchise, I am of the opinion that this in itself is not sufficient grounds for withholding subsidies to the district, if the need has been clearly shown and all steps pursuant to Section 242 are in order. At this time no other administrative unit would be entitled to the subsidy payment, nor are any of the towns which make up School Administrative District #3 entitled to any part of the subsidy. In my opinion, payment to the district is proper, provided all the conditions precedent warrant it.

GEORGE A. WATHEN

Assistant Attorney General