

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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“Due notice” is such notice as will adequately advise an offender of the facts comprising the offense with which he is accused.

The “due process clause” of our constitution requires that the notice called for in a judicial or quasi-judicial case be as indicated above — adequate to advise the accused of the specific offense.

Without a proper complaint the “due notice” cannot be given, for the notice is based upon the allegation in the complaint.

A comparable case can be found in the laws relating to teachers in our public schools.

“After due notice and investigation they (the superintending school committees) shall dismiss any teacher who proves unfit to teach, or whose services they deem unprofitable to the school, giving to the teacher a certificate of dismissal and of the reasons therefor. . .”

The notice in such case was that the committee was “to act upon the advisability of Lucinia E. Hopkins teaching said school, at which time and place said Lucinia E. Hopkins might present herself and be heard in the matter, if she desired.”

The court said in *Hopkins v. Bucksport* 119 Me. 437, 441:

“As notice to the plaintiff of the object of the meeting, such a statement is wholly insufficient; from it she could not know for what reason her dismissal was sought, whether upon the ground of moral unfitness, temperamental unfitness, or lack of educational qualifications; much less whether it was sought on the ground that her services were deemed to be unprofitable to the school. . . She was entitled to know in advance on what ground her dismissal was sought.”

For the above reasons we conclude that the complaint is insufficient.

We would also advise that our files reveal that on three prior occasions the governor and council have acted upon complaints under the same constitutional provision. In each of the instances the complaint was in the usual affidavit form, being sworn to by the complainant.

In the most recent matter in 1951 after a grand jury investigation the foreman of the grand jury was the complaining party to the governor and council. In the present instance after the grand jury investigated they made certain findings and recommendations with intentions of reviewing the situation in the January term, 1960.

FRANK E. HANCOCK
Attorney General

October 19, 1959

To: Asa A. Gordon, Coordinator of Maine School District Commission

Re: Election of School Directors

I have your request for an opinion regarding the manner of electing school directors by a municipality. Chapter 323, Public Laws of 1959, provides as follows:

“For the purpose of nominations, school directors shall be considered municipal officials and shall be nominated in accordance with Chapter 90-A or in accordance with a municipal charter, whichever is applicable.”

The directors should be elected in the same manner as other municipal officials. Section 37, Chapter 90-A provides:

“. . . the following provisions apply to the election of all town officials required by section 35 to be elected by ballot, . . .”

In subsection I of Section 37, it states:

“. . . the town shall determine, by a separate article in the warrant, which other officials are to be elected according to this section, . . .”

School directors are elective officials, not appointive, therefore, it is not necessary to hold a meeting to designate them as officials to be elected by secret ballot, since they are covered by the provisions of Chapter 90-A.

GEORGE A. WATHEN
Assistant Attorney General

November 4, 1959

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Secondary Schools — Admission of Students

I have your request for an opinion regarding the admission of students to secondary schools.

Section 102, Chapter 41, provides that the superintending school committee

“. . . shall make such examination of candidates for admission to said school as they consider necessary.”

Section 44, Chapter 41, states:

“Subject to the provisions of this section and subject to such *reasonable* regulations as the superintending school committee. . . shall from time to time prescribe, every person between the ages of 5 and 21 shall have the right to attend the public schools in the administrative unit in which his parent or guardian has residence.”
(Emphasis supplied)

Chapter 41 provides for compulsory education and also sets forth the duties of administrative units for support of free high schools.

The school committee has the authority to make reasonable regulations for admission to secondary schools and to examine those who wish to attend. It would seem to me that the examination and regulations would have to be set up based on the preparatory education offered by the administrative unit. If a child has satisfactorily passed the elementary courses, this is an indicia that he could profit from attendance in a secondary school. The school committee has authority to require further proof, but any tests should be commensurate with the program offered. I do not believe the tests should be a means of molding all students to one type of high school program. It is my understanding that the function of