

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

MAINE STATE
LIBRARY

dam sites, flowage rights, the right to set poles and maintain utility service lines and the right to construct and maintain roads, on lands belonging to the State, on such terms as they direct; also the right to cut timber and grass and lease camp sites, mill privileges, dam sites, flowage rights, the right to set poles and maintain utility service lines and the right to construct and maintain roads, on public reserved lots in any township or tract of land until the same is incorporated, on such terms as they direct. Preference in such sales or leases shall be given to persons, firms or corporations of this State."

Chapter 51, Resolves of 1959, authorizing the Forest Commissioner to make the initial grant "under such terms and conditions as can be mutually agreed upon by the State and the United States" does not, in our opinion, amend section 12 to the extent that by the deed the Commissioner could grant wholesale licenses to many unnamed people. That would be the effect of Leonard Pierce's suggested amendment.

To get to your immediate question, we are advised by the Forestry Department that Mr. Pierce has never been granted any rights with respect to the road. It appears that accompanying Mr. Pierce's right to timber and grass is the right to use a small bulldozer — in other words, to remove the timber via the "Twitch" road with which we are familiar. His request that he, or he and others similarly situated, be granted rights in this deed, appears to be outside the intent or authority of the Act authorizing the transfer, and in conflict with section 12. A statement in the deed that such persons already had rights, subject to which the Government would use the road, would be erroneous, according to the facts that have been revealed to me.

I have this suggestion — we would be happy, by an appropriate Council Order, to grant a permit to Mr. Pierce to use that road. In such a case we believe Mr. Pierce would have a right equal to that of the State to use the road in question. Please let me know, and I'll see that the order is prepared.

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

December 31, 1959

To: Fred L. Kenney, Director of Administrative Services, Education

Re: Tuition of

I have your request for an opinion regarding the liability for the Town of China for tuition of . Based on the facts presented, the court has awarded custody of the child to Mr. and Mrs. of China.

Section 44, Chapter 41, Revised Statutes of 1954, provides that residence for school purposes "shall be the administrative unit where the person having custody of the child maintains his or her home".

It is my opinion that China is liable for the tuition of this child.

Section 108, Chapter 41, contemplates one administrative unit sending pupils to another unit, an academy, or institute and not when there is a dispute as to the residence of a child. When two units are in dispute as to the factual determination of the residence of a pupil, the proper recourse is to the courts and not substitute the opinion of this office for a court determination.

GEORGE A. WATHEN
Assistant Attorney General

January 4, 1960

To: Perry D. Hayden, Commissioner of Mental Health and Corrections

Re: Escapes

We have your memorandum of December 23, 1959, in which you ask:

“When an inmate escapes from the Reformatory for Men and upon apprehension is tried for escape on complaint of the Superintendent of the Reformatory for Men, and is then committed to the Maine State Prison for escape, what becomes of the initial sentence he was serving at the time he made his escape?”

There are several statutes relating to escape from penal institutions. However, there is one which relates directly to escapes from the Reformatory for Men — Chapter 27, Section 73, Revised Statutes of 1954. We interpret Section 73 to mean that upon the escape of an individual from the Men’s Reformatory, alternative action may be taken against him: 1. Transfer upon recommendation of the Commissioner to the State Prison where he shall serve the remainder of the term for which he might otherwise be held at the Reformatory or 2. At the discretion of the Court he may be punished by imprisonment at the State Prison for any term of years. If the latter alternative is taken, it appears to us that the original sentence to the Reformatory for Men is no longer considered. In all probability the Court would, in considering the sentence to be imposed for the escape, take into consideration the time left to be served at the Reformatory and include it in the sentence to the prison.

JAMES GLYNN FROST
Deputy Attorney General

January 5, 1960

To: Kermit Nickerson, Deputy Commissioner of Education

Re: Vocational Rehabilitation

I have your request for an opinion regarding an alleged conflict between Section 195-A, Chapter 41, and Section 195-E, Chapter 41, as enacted by Chapter 286, Public Laws of 1959.

Section 195-A states:

“. . . Subject to the approval of the State Board of Education, the executive officer of the state board shall make such rules and regu-