

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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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-

lations as he finds necessary or appropriate to efficient administration of a program of vocational rehabilitation, shall enter into agreements with local state and federal agencies providing services relating to vocational rehabilitation, . . .”

The executive officer of the board refers to the Commissioner of Education, Section 5, Chapter 41, Revised Statutes of 1954.

Section 195-E sets out the powers and duties of the Vocational Rehabilitation Division with the proviso that such powers and duties are subject to the approval of the state board. Subsection I, Section 195-E, states that the director may prescribe regulations (1) governing the protection of records and confidential information; (2) the manner of filing applications; (3) eligibility and other working or administrative procedures.

It appears from reading the two sections that there is no conflict in the laws but a division of the authority to make rules and regulations. It seems that the language in Section 195-A contains a broad grant of rule making power to the Commissioner subject to the approval of the board and many of the steps he is authorized to take in this field are necessarily antecedent to any valid rule or regulation being promulgated by the director. The director's rule making power is limited to those areas specifically set out in Section 195-E and subject to the approval of the state board. It is my opinion that if the Commissioner promulgated a rule or regulation covering any area that the director has authority to regulate, the general regulation by the Commissioner would preempt the director from promulgating a regulation in this area.

However, based on the departmental organization, it would be presumed that most of the rules and regulations would be a cooperative venture with complete agreement between the commissioner and the director. In any event, the Board of Education must approve all rules and regulations before they become valid.

GEORGE A. WATHEN
Assistant Attorney General

January 5, 1960

To: Frederick N. Allen, Chairman of Public Utilities Commission

Re: Casco Bay Lines

I have your memorandum of December 22, 1959, in which you request an opinion relating to the Commission's jurisdiction over Casco Bay Lines.

Section 10, Chapter 495, of the Private & Special Laws of 1885 (Incorporation of People's Ferry Company) was amended by Chapter 116 of Private & Special Laws of 1953, part of which reads as follows:

“Sec. 10. . . The People's Ferry and Casco Bay Lines shall maintain safe daily service to the islands of Casco Bay under regulations promulgated by the public utilities commission as to rates, schedules and safety.”

Obviously the legislature intended that jurisdiction over this utility be placed in the Public Utilities Commission. It is my understanding that the Commission has acted in the field of rates and schedules although