

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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produced by the operator, that is, does he run a dairy farm and supplement his business with outside purchases, or is he primarily engaged in distribution or processing and as a minor adjunct to this business keep some cows. The operation of the business may be such that the employees who are engaged in processing have no duties in the production aspect of the business.

It is difficult to set forth a general rule on the meaning of "individuals employed in agriculture", since each case should be reviewed on its own fact situation, but as a guide, I would suggest that those operations in which the production of agricultural products is the primary purpose, and in which packing and transporting is an adjunct thereto, that the employees are exempt. I am referring here to operations where the same employees perform some of each of the duties in the chain from the farm to market.

In the operation of a processing plant, the employees should not be considered exempt. Office help in connection with agricultural operations are not normally considered agricultural labor. The term used in our act is broader than the term farm labor.

When a specific fact situation arises, it should be reviewed in the light of the various decisions of the courts on this subject.

GEORGE A. WATHEN
Assistant Attorney General

March 16, 1960

To: Dr. Warren G. Hill, Commissioner of Education

Re: State Subsidies for Transportation

I have your request for an opinion regarding the state subsidy for transportation. Section 237-D, Chapter 41, provides that pupil transportation shall be computed in determining the foundation program allowance for each administrative unit. *Squires, et al. v. The Inhabitants of the City of Augusta, et al.*, 155 Me. 151, held that municipalities may not use contingent funds or school funds to transport pupils to parochial schools.

I have searched the statutes for the duties of the Commissioner when monies have been improperly expended by a municipality for transportation. Section 28, Chapter 41, provides that:

"All moneys provided by towns or other administrative units or apportioned by the State for the support of public schools shall be expended for the maintenance of public schools established and controlled by the administrative units by which said moneys are provided or to which such moneys are apportioned."

This directive of the legislature is clear and unambiguous. Section 237-A, Chapter 41, reads in part:

"After providing an opportunity for a hearing, the State Board of Education, on recommendation of the Commissioner, may adjust the state subsidy to an administrative unit when, in

the opinion of the Board, the expenditures for education in such unit show evidence of manipulation to gain an unfair advantage or are adjudged excessive.”

Section 31, Chapter 41, provides that funds may be withheld by order of the Governor and Council from administrative units that have failed to expend school money received from the state or in any way failed to comply with the law governing the duties of administrative units.

One of your duties as Commissioner of Education is to apportion subsidies to administrative units. Section 237-D, Chapter 41, sets forth the elements to be used in determining the foundation program allowance. One of these elements is pupil transportation. Before you can properly execute your statutory duty of computing the foundation program allowance, you must know the amount of money the administrative unit has allocated and expended for public pupil transportation. If you have information that any of the figures supplied are in error, I believe you may require substantiating information to enable you to properly perform the duties required of you. In addition to this, you may recommend an adjustment pursuant to the procedure set forth in Section 237-A, Chapter 41.

Your basic query is how an adjustment shall be made to conform to the law. There is no statutory provision for an adjustment of monies expended by an administrative unit for an unauthorized purpose. Such monies cannot be included in your computation for the foundation program allowance. Your concern is limited to money expended for public school transportation. If sufficient evidence cannot be presented to you of the amounts spent for this purpose, you cannot include these monies in your computations for subsidy.

GEORGE A. WATHEN
Assistant Attorney General

March 18, 1960

To: Honorable Dwight A. Brown
68 Main Street
Ellsworth, Maine

Dear Mr. Brown:

I have your question regarding your desire to run for the unexpired term of senator in your county while serving in the House of Representatives.

It is my understanding that your question is whether or not you can, if elected, continue your duties as a representative until you qualify for the senatorial seat.

There are certain basic rules concerning incompatibility of offices which I feel would apply to this situation. The two offices are incompatible and both cannot be retained as pointed out in *Stubbs v. Lee*, 64 Me. 195, when one accepts an office incompatible with the first, he, therefore, relinquishes the former. *Howard v. Harrington*, 114 Me. 443.