

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

a loan and building association is in compliance with or in violation of the limitations.

The word "or" may be used synonymously with "either;" and the word "or" may be used as allowing an alternative. We believe that the association has a choice, and may hold real estate to an amount not exceeding 5% of its shareholders' accounts, or to an amount not exceeding its reserve fund, whichever limitation the association believes to be most desirable.

JAMES GLYNN FROST

Deputy Attorney General

February 17, 1961

To: Secretary of State

Re: Foreign Corporation

Attention: Bernice Henderson

We have your request for an opinion as to whether or not a Massachusetts corporation having a manufacturer's sales representative in the State of Maine would be considered as doing business in this State and thus subject to the laws relating to foreign corporations.

We have examined the applicable law and the letter from the attorney for this Massachusetts corporation and have concluded that on the basis of the facts contained in that letter the corporation would be doing business in the State of Maine and would thus be subject to our laws relating to a foreign corporation.

THOMAS W. TAVENNER

Assistant Attorney General

March 1, 1961

To: Asa Gordon, Coordinator of Maine School District Commission

Re: Legislative Document Nos. 669, 829, 835, 1071, 1075, 1110 and 1178

This is an answer to your request of February 10, 1961, for an opinion relative to Legislative Document numbers 669, 829, 835, 1071, 1075, 1110 and 1178.

The proposed legislation falls into two classes, i. e., bills for the withdrawal of a municipality from a school administrative district and bills for dissolution of a school administrative district. Since different statutory provisions or legal principles apply to each of the above-mentioned classifications, I will answer the questions you propose with respect to each classification.

*Legislation for Withdrawal of a Municipality from a School Administrative District.*

Section 111-P, Chapter 41, Revised Statutes of 1954, provides for the procedure for withdrawal as follows:

"When the residents of a participating municipality have indicated their desire to withdraw from a School Administrative District by a 2/3

vote of the legal voters in said municipality present and voting at a special meeting, called and held in the manner provided by law for the calling and holding of town meetings, such withdrawal may be authorized by special act of the Legislature upon such terms as shall be contained in such special act. No such withdrawal shall be permitted while such School Administrative District shall have outstanding indebtedness or shall be obligated to the Maine School Building Authority pursuant to any contract, lease or agreement.”

There is no doubt that the Legislature having created the school administrative district may change the district. As stated in *Kelley v. Brunswick School District*, 134 Me. 414 at page 420:

“A school district is a public agency or trustee established to carry out the policy of the State to educate its youth. The Legislature may change such agencies, and control and direct what shall be done with school property. . .”

In answer to question No. 1 in your memorandum, the legal rights of the other municipalities within the school administrative district are impaired by the withdrawal of one of the towns especially when the school district has outstanding debts. The withdrawal bills would appear to be an attempt to avoid the general law, Section 111-P, Chapter 41, supra, by permitting a town to withdraw under special legislation even though the school district may have debt outstanding. Such special legislation as an attempt to avoid the general law would appear to be class legislation in violation of the State and Federal Constitutions. See *Lewis v. Webb*, 3 Me. 326; *In re Milo Water Company*, 128 Me. 531; *Milton v. Railway Co.*, 103 Me. 218.

The answer to question No. 2 of your memorandum relates to the answer given above to question No. 1, in that other municipalities in other districts are not afforded the privilege granted by the special legislation, i. e., withdrawal of a municipality even though there may be outstanding debt owing by the school district.

Questions No. 3 and No. 4 of your memorandum are not legal questions but inquire as to present or future impairment of the financial rights of other districts. This office cannot properly answer such financial questions; however, inquiries have been made of the bank which handles a majority of the sales of Maine School District Bonds and of the bond counsel, requesting an opinion in answer to questions No. 3 and No. 4. Attached is the answer of the bank, and the answer of the bond counsel will be forwarded when received.

In answer to question No. 5, the Legislature, having granted the municipalities the right to vote on formation of a school district and having granted the voters within the district control of the finances of the school district, has granted a large measure of “home rule.” Those bills with emergency provisions do violate the provisions of “home rule” contained in the Constitution of Maine, Article IV, Part Third, Section 16. See *Lemaire v. Crockett*, 116 Me. 263.

*Legislation for Dissolution of a School Administrative District.*

Chapter 41 of the Revised Statutes of 1954, as amended, prescribes the procedure for the formation of a school administrative district but no provision is made under the law for dissolution of a school administrative district. The Legis-

lature, having created the school district has within its discretionary power the authority to dissolve a school district. In *Kelley v. Brunswick School District*, supra, at page 421, the court stated:

“A statute cannot be invalidated because it seems to the court to inaugurate an inexpedient policy. All questions as to the expediency of a statute are for the Legislature. This is a line of inquiry which courts cannot pursue in determining the validity of a law.

“Whether the enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve desired results, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner, are matters for the judgment of the legislature, and the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance.” *Chicago etc., R. R. Co. v. McGuire*, 219 U. S., 549, 55 Law ed., 328.”

In answer to question No. 1 of your memorandum, even though the legal rights of the municipalities may be impaired by dissolution of the school administrative district, it is within the discretion of the Legislature to protect the rights of the municipalities within the district by directing the equitable distribution of funds held by the district and proration among the municipalities of debt assumed by the district.

In answer to question No. 2 of your memorandum, dissolution of one school administrative district in no way affects the legal rights of other school administrative districts in the State.

The answers previously given to questions numbered 3, 4 and 5 on withdrawal apply to legislation for dissolution of a district.

RICHARD A. FOLEY

Assistant Attorney General

March 6, 1961

To: Roland H. Cobb, Commissioner of Inland Fisheries and Game

Re: Low water level of a great pond

This is in response to your letter of February 13, 1961 in which you ask “How is the natural low water level of a great pond determined?”

To our knowledge such low water level has never been determined with respect to any pond. Of course, the proof would depend upon the reason for asking the question. If the question is as the result of an upland owner trying to determine where his boundary is, we offer the following quote from *Stevens v. King*, 76 Me. 199:

“The shore of a pond, being the space between high and low water, necessarily has two sides, a high water side and a low water side; and land bounded by the shore may be bounded by the high water side or the low water side. If the side lines of a parcel of land, starting back from the pond, run to the shore, and there stop, and the line between these two points runs along the shore, of course the land will be bounded by the high water side of it. But if the side lines are described as running to the pond, the result will be otherwise. The legal force and effect of