

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

You then ask for rulings on the following situations:

"1. Veteran enters service during wartime, is discharged solely for purposes of reenlistment without interruption, and was not otherwise eligible for discharge at that instant. Subsequently, he is dishonorably discharged in either a wartime or peacetime period. VA holds this is in effect one period of service and no eligibility for benefits based on this period of service. Our present policy: same as VA and so recommend."

Answer: The policy appears to us to be proper.

"2. Veteran has two periods of service during wartime, one period honorable and other dishonorable. VA holds benefits may be granted based on the honorable period of service. Our present policy: to base eligibility on the *second* period of service and so recommend."

Answer: The policy appears to us to be proper assuming that the second period of service is the one on which a dishonorable discharge has been granted.

"3. There are a myriad of types of discharges between honorable and dishonorable. There are even some types ostensibly honorable in nature which VA has ruled after investigation to be in effect dishonorable. Our present policy: to follow VA ruling."

Answer: VA rulings ought to be used by you merely as a guide. It would be improper for you to permit some third party to substitute his discretion and judgment for that discretion and judgment that should be exercised by you. Otherwise the policy appears to be proper.

"4. As our benefits are based on war time service, our policy is to totally ignore any period of service rendered solely in peacetime regardless of type of discharge, and so recommend."

Answer: This policy appears to be proper; peacetime meaning any time outside the periods indicated by section 10 of Chapter 26, which section outlines the dates of World War I, World War II, or the Korean conflict.

JAMES GLYNN FROST

Deputy Attorney General

May 5, 1961

To: Doris M. St. Pierre, Secretary of Real Estate Commission

Re: Application for Real Estate Brokers License

This is in answer to your request for an opinion of May 2, 1961.

You have inquired whether or not an individual who holds a broker's license and is designated as a broker for other corporations must have the recommendations of three citizens as required by the Revised Statutes of 1954, Chapter 84, Section 5. In my opinion, requirements of Section 5 are mandatory and every application for a broker's license must have the recommendations provided by Section 5.

You have also inquired whether or not other individuals who will work for the corporation must be licensed when the corporation already has a designated broker. I would refer you to the Revised Statutes of 1954, Chapter 84, Section 3,

second paragraph requiring that every member or officer of a corporation who actively participates in the brokerage business must hold a real estate broker's license or a salesman's license.

RICHARD A. FOLEY
Assistant Attorney General

May 11, 1961

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Closing of Elementary Schools

This is in answer to your request for an opinion dated April 19, 1961. The situation outlined in your memorandum is as follows:

A town voted to close its only elementary school for 1 year. However, the school committee did not recommend the closing of the elementary school.

Revised Statutes of Maine of 1954, Chapter 41, Section 14, provides in part: ". . . any town at its annual meeting, or at a meeting called for the purpose, may determine the number and location of its schools and may discontinue them or change their location; but such discontinuance or change of location shall be made only on the written recommendation of the superintending school committee and on conditions proper to preserve the just rights and privileges of the inhabitants for whose benefit such schools were established; . . ."

Since the school committee did not recommend the discontinuance of the school prior to the town vote, the vote to close the school is invalid.

You have inquired whether or not the school committee can suspend the school for one year and make arrangements for the pupils to attend school in another town.

Revised Statutes of Maine of 1954, Chapter 41, Section 14, provides in part: ". . . that in case any school shall hereafter have too few scholars for its profitable maintenance, the superintending school committee may suspend the operation of such school for not more than 1 year, but shall not close such school for a longer period nor again thereafter suspend operation of such school unless so instructed by the town, . . ."

There is no provision, after the school committee suspends a school as provided in Section 14, to pay tuition to another town for the schooling of its elementary pupils.

You have also inquired whether or not a school committee has authority, while maintaining a school, to allow pupils who wish to do so to attend school on a tuition basis in another town.

Revised Statutes of Maine of 1954, Chapter 41, Section 93, provides:

"Children to attend school in adjoining administrative unit: tuition.
— Children living remote from any public school in an administrative unit in which they reside may be allowed to attend the public schools, other than a high school approved as provided in section 107, in an adjoining administrative unit, under such regulations and on such terms