

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1961 - 1962

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

as the school committees or school directors of said administrative units agree upon and prescribe, and the school committee or school directors of the administrative unit in which such children reside shall pay the sum agreed upon out of the appropriations of money raised in said administrative unit for school purposes. It shall be the duty of any superintending school committee, community school committee or board of school directors to accept tuition pupils from any nearby administrative unit that has a total April 1st resident pupil count of 10 or less pupils when so requested by the state board of education. Except as above provided, a child may attend a public elementary school in an administrative unit other than the administrative unit where he lives with his parent as defined in section 44, after having obtained the consent of the superintending school committee or school directors of such administrative unit, and the parent or guardian shall pay as tuition a sum equal to the average expense of each scholar in such school."

It is clear that under Section 93 when a town maintains an elementary school, the only basis for allowing a pupil to attend school in another town and payment of tuition by the sending town is upon a finding of the school committee that the pupil lives remote from the public school in his own town, except that with approval of the school committee a parent may send his child to another town but the parent must pay the tuition and not the sending town.

RICHARD A. FOLEY

Assistant Attorney General

May 24, 1961

To: Raeburn W. Macdonald, Chief Engineer of Water Improvement Commission

Re: Legislative Document #316

We have your request of May 22, 1961 for an opinion as to certain aspects of Legislative Document #316 (An Act Relating to Pollution Abatement). It is our understanding that you wish advice as to whether or not this proposed legislation, if enacted, would enable the Water Improvement Commission to make additional grants for municipal pollution abatement programs already under way, when and if this legislation becomes effective.

The general rule of statutory construction is that all laws are prospective and not retrospective unless it is the plain intent of the legislature that the law be retrospective. *Bowman v. Geyer*, 127 Me. 354; *Nichols v. Nichols*, 118 Me. 24; *Central Maine Power Co. v. Public Utilities Commission*, 150 Me. 269.

This legislation would affect projects or portions of projects begun or carried on after the effective date of the law. In light of this, the answers to your specific questions are as follows:

(1) No additional funds could be granted under this legislation to a municipality which had already been granted State funds for a project finally concluded in all respects before the effective date of L.D. #316.

(2) No additional contribution could be made to a municipality engaged in a project which was physically complete but on which State and Federal contributions were still due.