STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

(3) In the situation in which an application for funds was made and granted and the construction was under way and State payments partially made, additional payments could be made to the municipality on the work still remaining to be done, on the date on which this legislation goes into effect. These additional funds could be granted upon supplementary application by the municipality, but would be limited to a percentage of the total cost of the project, which percentage would be based upon the amount of work still remaining to be done on the effective date of this legislation.

(4) The answer to number (3) would not be altered by the fact that no State payments had been made to the municipality. Additional payments must be limited to the work remaining to be done upon the effective date of this legislation.

(5) Grants made upon any application between now and the date upon which this legislation becomes effective must be limited in accordance with the statute now in effect and cannot be based upon the payment schedule contained in L.D. #316. This does not mean, however, that supplemental application could not be made in accordance with (3) above.

(6) See answer to (3) above.

THOMAS W. TAVENNER

Assistant Attorney General

May 26, 1961

To: Walter B. Steele, Jr.
Executive Secretary
Maine Milk Commission
Augusta, Maine

Dear Mr. Steele:

We have your memo of May 5 in which you question the practice whereby certain grocery chains doing business in Maine require the milk dealers servicing them to date-code their milk and provide a fresh supply in entirety at least as often as every three days.

You state that "Obviously, this creates an additional cost to dealers since they are compelled to replace any three day old milk even though it is still perfectly fit for human consumption. This is especially true of milk carried over a week end by the store. Additionally, dealers so affected must comply or risk the loss of their market to a competitor who would provide this service."

With respect to this practice you ask whether this type of dealer-store relationship falls into a "guaranteed sale" category and, as such, becomes an added service which could be considered contrary to the provisions of the Maine Milk Commission Law.

We can find no section of the Maine Milk Commission law (Chapter 33, R. S. 1954 as amended) which is violated by this practice, nor can we find any reference in the law to "guaranteed sales."

The thought has been expressed that perhaps the practice in question may be prohibited by that portion of section 4 of chapter 33 which provides that "it shall be unlawful for any person to engage in any practice destructive of the scheduled minimum prices for milk established under the provisions of this Chap-

ter for any market, including but not limited to any discount, rebate, gratuity, advertising allowance or combination price for milk with any other commodity."

We do not believe the practice is an act destructive of prices established for the sale of milk. The practice approaches a consignment with title to the product remaining in the vendor dealer and the store paying for so much of the dealer's milk as is sold within a specified period. Sale on a consignment basis is not prohibited by the Maine Milk Commission law, but, to the contrary, appears to be recognized in section 1 (defining dealer) and again in that portion of section 4 authorizing dealers who purchase or receive milk for sale as consignee to deduct an allowance for transportation.

Very truly yours,

JAMES GLYNN FROST

Deputy Attorney General

June 2, 1961

To: Earle R. Hayes, Executive Secretary of Maine State Retirement System

Re: Status Under the Retirement System of Berwick Academy and North Yarmouth Academy

We have your memo of February 13, 1961 in which you ask if certain academies now participating in the Maine State Retirement System revert to strictly private schools can they then, in their status of private schools, withdraw from the Maine State Retirement System.

We gather that the schools in question have never been purely public schools; that is, schools supported by general taxation, open to all free of expense, and under the control and superintendence of agents elected by the voters, but that they are institutions incorporated by special charter or under the laws of a state, and are controlled in most instances by their own officers. Occasionally such an academy may be governed with respect to certain matters by a joint board composed of trustees of the academy and a superintending committee of a town, but such joint board does not actually change the overall status of the school. See chapter 41, section 105, R. S. 1954 as amended, as to joint boards.

Membership in the Maine State Retirement System is as a result of legislation, and notwithstanding that such schools are private in nature.

The statutes authorizing participation by such academies remain unchanged on our books, and are of such a tenor that the academies are in the System regardless of their private, semi private, or other status.

Pertinent statutes are as follows:

1. Section 3, chapter 63-A, provides that "employees" become members of the Retirement System as a condition of employment.

2. "Employee" is defined in section 1 of chapter 63-A as meaning ". . . for the purposes of this chapter (Maine State Retirement System law) teachers in the public schools . . . "

3. "Public schools" are defined in section 1 of chapter 63-A as follows:

" 'Public school' shall mean any public school conducted within the State under the authority and supervision of a duly elected Board of