

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1961 - 1962

federal government located on a federal reservation are presently being used as school facilities under the direction of the school committee of the Town of Limestone. The school committee operates the schools under a use and occupancy permit issued by the federal government to the school committee of the Town of Limestone but title to the building remains in the federal government. The pertinent sections of the permit issued by the federal government are as follows:

- "1. That the Agency (Limestone School Committee) shall conduct in such facilities an education program for children residing on Loring Air Force Base as a part of the Agency's school system in accordance with the laws of the State of Maine."
- "3. That the Agency (Limestone School Committee) shall use the Property during the term of this permit for the purpose described above, subject to such reasonable rules and regulations relative to ingress, egress, security, and non-school use as may be prescribed by the Secretary of the Air Force or the Officer in charge of the installation with the approval of the Commissioner of Education."
(Words in parenthesis supplied)

The federal government at this time wants to use the school property for Sunday School instruction not during regular school hours. If the federal government interprets "non-school use" as used in paragraph 3 recited above to mean a reservation of uses for the purpose of Sunday School instruction not during regular class hours, we have no quarrel with such an interpretation. Since title to the building remains in the federal government and the school committee of Limestone has use and occupancy for limited purposes, the federal government can make such uses of the building as it deems necessary.

RICHARD A. FOLEY

Assistant Attorney General

November 27, 1961

To: Ralph L. Langille, Chief Inspector of Boilers, Labor and Industry

Re: Boilers in Buildings used for Schools for Religious Instruction

You have apparently asked several questions relative to buildings used by religious groups for the purpose of religious instruction. I will try to break these down and answer each as it appears. Before I answer each question it may be advisable to set forth certain generalities that govern the individual situations covered in your memo.

Chapter 30, section 72 as amended by Public Laws of 1955, Chapter 404, section 2, reads in part:

"Each steam boiler used or proposed to be used within this State and all hot water supply and hot water heating boilers located in schoolhouses and all boilers owned by municipalities, except boilers exempt under the provisions of section 78, etc."

Thus it appears that each steam boiler wherever situated is subject to inspection. (Of course, steam boilers exempted under section 78 are not subject to inspection.) Therefore, we are not concerned with whether a building is a schoolhouse or not if the building is heated by a steam boiler.

We are left, therefore, with "hot water supply and hot water heating boilers located in schoolhouses." We must note that the statute says "located in schoolhouses" not "located in buildings used for school purposes." The next step is to define a "schoolhouse" as used in this statute.

This has been done by the legislature in Chapter 404, P.L. 1955, as follows:

"The term 'schoolhouse' as used in this chapter shall include, but shall not be limited to, any structure used by schools or colleges, public or private, for the purpose of housing classrooms, gymnasiums, auditoriums, or dormitories."

The key words in this definition are "any structure used by schools and colleges." In other words, the test or standard to be applied to a building is whether the building is "used by schools and colleges." Apparently the legislature felt that the test or standard to be used should be *who* used the building not necessarily *for what* it was used.

Applying this test or standard to the questions asked we come up with the following conclusions:

Question: Are hot water supply and hot water heating boilers located in buildings used in entirety as "day schools" for religious instruction *only* subject to inspection under Chapter 30?

Answer: A building used as a so-called "day school" exclusively for religious instruction is not a "schoolhouse" within the statutory definition. A building thus used is really a church building.

It follows from this that buildings used on a partial basis for classes in religious instruction *only* are not schoolhouses within the statutory definition.

It appears that the last sentence of our opinion of December 3, 1953, was not materially changed by section 1, Chapter 404, P.L. 1955 in defining "schoolhouses."

GEORGE C. WEST

Deputy Attorney General

November 27, 1961

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Subsidy Payable to Towns and Community School District in Former School Administrative District #2

This is in answer to your request for an opinion relating to the payment of state subsidy to the towns of Perham, Washburn and Wade as well as the community school district composed of the towns of Castle Hill, Chapman and Mapleton as successors to School Administrative District No. 2 which was officially dissolved on September 25, 1961.

Since School Administrative District No. 2 is no longer a legal entity, the remaining one-third payment of the subsidy payable in December of 1961 cannot be paid to the school administrative district. The question arises whether or not the remaining one-third payment of the subsidy may be paid to the towns and community school district formerly comprising School Administrative District No. 2.

Section 237-D, Chapter 41, R. S. 1954, provides in part as follows:

"The foundation program allowance for each administrative unit,