

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

A definition would be "any obligation of a candidate or committee for services rendered by request of a candidate or committee for which a bill has been received but not fully paid." The word "services" includes radio and television time, advertising and all other items which a candidate or committee purchases.

GEORGE C. WEST

Deputy Attorney General

June 14, 1962

To: Paul A. MacDonald, Secretary of State

Re: Mileage for the Executive Council

The question asked is stated in the following language:

"I have been requested by the Executive Council to make inquiry of you as to whether the provision of Section 31, Chapter 16 of the Revised Statutes, as amended by Chapter 415 of the Public Laws of 1957 relating to automobile travel by State Employees applies to members of the Executive Council."

Chapter 11, § 3, covers the pay and expenses of the executive council. This section provides that from January to adjournment of the legislature the council members shall receive the same compensation and travel as representatives to the legislature. The second sentence provides that at other sessions of the council the members shall receive \$20 for each session "*and actual expenses.*"

Section 44, Chapter 15-A (formerly § 31, chap. 16) as enacted by chapter 340, § 1, Public Laws 1957, provides that the state shall pay for the use of privately owned automobile for travel by employees of the state not more than 8c per mile for the first 5,000 miles and 6c per mile after 5,000 miles traveled in each fiscal year.

The latter section does not say that the figures paid for travel by employees are "actual expenses." The statute merely says that the state will pay not more than those amounts.

The Executive Council members are to receive "actual expenses" hence they are not bound by the provisions of section 44, chapter 15-A.

GEORGE C. WEST

Deputy Attorney General

June 20, 1962

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Religious Instruction in Public Schools

This is in answer to your inquiry as to the legality of the rental or lease of a public building to a particular religious denomination for use outside of regular school hours.

It appears that the previous opinions of this office, which you referred to in your memorandum, do not rule directly on the question of leasing a public building to a religious denomination before or after regular school hours.

There is a split of authority in those states which have considered this prob-

lem. Annotation 79 A.L.R. 2d 1148. In those states which do permit such leasing during non-school hours, the courts indicate that the school board must insure that there is no abuse of discretion. The court stated in *Southside Est. Bapt. Church v. Trustees*, (Florida), 115 So. 2d 697:

“We, therefore, hold that a Board of Trustees of a Florida School District has the power to exercise a reasonable discretion to permit the use of school buildings during non-school hours for any legal assembly which includes religious meetings, *subject, of course to judicial review* should such discretion be abused to the point that it could be construed as a contribution of public funds in aid of a particular religious group or the promotion or establishment of a particular religion.” (Emphasis supplied)

In determining whether or not there has been an abuse of discretion in renting the public building for private use, the courts use various criteria; does the private use of the building interfere with the operation of the school system; is a fair rental paid for the private use; have a majority of the taxpayers in the school district authorized the rental or lease; is the public building available to all denominations; is the use temporary or under a long term lease.

Traditionally in this State the superintending school committee has general management and control of the public schools in its own towns. Section 54 of Chapter 41, Revised Statutes of 1954, prescribes the duties of the superintending school committee as follows:

“1. The management of the schools and custody and care, including repairs and insurance on school buildings, of all school property in their administrative units.”

It is well known that many towns permit use of public buildings for private functions either gratis or under a rental arrangement. I do not find in the case law of this State a prohibition against the lease of a public school prior to or after regular school hours. I do not find a statute in our State which forbids such a lease. Section 147 of Chapter 41 providing for release time during regular school hours for religious instruction does not prohibit such a lease agreement.

The lease agreement does not violate the state or federal constitution. There is no expenditure of public monies to support a particular religious denomination. There is no inculcation of a captive audience of students by a public school teacher during regular school hours of a particular religious doctrine.

The problem is primarily one for a court, i.e. whether or not there has been an abuse of discretion by the town in leasing a public building under authority of Section 54 of Chapter 41, *supra*.

RICHARD A. FOLEY

Assistant Attorney General

July 10, 1962

To: Paul A. MacDonald, Secretary of State

Re: Vacancy in office of County Commissioner

The facts as stated are that a vacancy has occurred in the office of a county