

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

in either the town of Norway or the town of Paris would be a nullity and could not be the basis for instituting a vote on dissolution in the District.

RICHARD A. FOLEY

Assistant Attorney General

December 28, 1962

To: Kermit S. Nickerson, Deputy Commissioner of Education
Re: Transportation of Students in Privately-Owned Vehicles

Your memorandum of November 16, 1962, is answered below.

The memorandum states that a request has been made of your department to provide information concerning the liability of teachers and school officials when transporting pupils to school-connected, extra-curricular activities in privately-owned automobiles. You state that you have discussed this matter with the Insurance Department and that that Department advised you to secure an opinion from this office.

We are in accord with the suggestions advanced by your memorandum:

1. That schools should require any person transporting students to school-sponsored affairs to provide proof of liability insurance up to a fixed amount, and
2. That the administrative unit or school provide additional extended coverage similar to that provided by the State of Maine for drivers of automobiles who are reimbursed for travel on state business.

Finally, we concur with you in your recommendation that the administrative unit or school carry adequate insurance protection on driver education vehicles when those which are used for the transportation of teachers and pupils to school-sponsored affairs.

Assistant Attorney General Albert Guy is assigned to the Insurance Department; any requests for opinions concerning matters of insurance may be directed to him through administrators in that Department.

Thank you for your attention.

JOHN W. BENOIT, JR.

Assistant Attorney General

December 28, 1962

To: Walter B. Steele, Jr., Executive Secretary, Maine Milk Commission
Re: Licensing of Foreign Corporation to sell milk within the State of Maine
Your memorandum of December 19, 1962, is answered below.

The Commission has inquired whether a foreign corporation not authorized to do business in this state pursuant to section 128 of chapter 53 of our Revised Statutes of 1954 shall be granted a license pursuant to the Maine Milk Commission Law.

The application for the license by the corporation should not be considered as "doing business" in this state.

"The mere obtaining of a license, to do business in a state is not equivalent to 'doing business' therein. *Hoopeston Canning Co. v. Pink*, 24 N.Y.S. 2d 312, 323." Words and Phrases, "Doing Business."

Section 128 of chapter 53 of our Revised Statutes of 1954 requires that a foreign corporation, before transacting business here, file certain incorporation papers with our secretary of state.

“Every such foreign corporation, before transacting business in this state, shall file with the secretary of state a copy of its charter or certificate of incorporation, . . .”

A request by the Commission that such foreign corporation comply with the laws pertaining to such corporations is not discriminatory and, therefore, is not in violation of the constitution of the federal government requiring that equal privileges be available to the citizens in the several states.

Compliance with the provisions relative to foreign corporations would expose to the Commission the foreign corporation’s “purposes” for existence, thereby informing the Commission whether the foreign business is authorized to do those acts for which it desires to become licensed.

A direction to the applicant that he satisfy reasonable “conditions precedent” (comply with a provision of law) have been upheld as follows:

“ . . . License laws may also, as a condition to carrying on a trade or business, and considering its character, require the following: the registration of licenses; the obtaining of permits in certain cases; . . .”

33 Am. Jur., “Licenses” § 52 at p. 372.

The conclusion must be that the Commission’s request that a foreign corporation comply with registration requirements existing in our laws relating to business corporations as a condition precedent to securing the Commission’s license is not improper.

JOHN W. BENOIT, JR.

Assistant Attorney General