

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

January 7, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Responsibility for School Property during Emergencies

Your memorandum of December 5, 1962, is answered below.

Question:

In the event an emergency occurs or may be impending, does the local civil defense director have the authority to take over school facilities for feeding centers, hospitals, etc., or does such authority rest with the county or the state civil defense officials?

Answer:

Until the governor of our state executes the emergency powers prescribed in the Maine Civil Defense and Public Safety Act of 1949 (R. S. 1954, c. 12, amended), responsibility for management of school buildings rests with superintending school committees and school directors of the various administrative units as set forth in sec. 54, c. 41, R. S. 1954, amended. Pending the governor's proclamation declaring that an emergency exists in any or all sections of the state (§ 6, c. 12, R. S. 1954, amended), local, county, and state civil defense officials have authority to prepare for the carrying out of all emergency functions set out in § 3 of the Act. These acts done in preparation for emergencies do not include the exercise of control over school facilities.

Upon the issuance of the emergency proclamation by the governor of our state, those plans specified in sec. 6, II, c. 12, R. S. 1954, would, presumably, be put into operation. (The school officials raising questions concerning the control of school facilities in the event of an emergency proclamation by our governor might inquire whether, in their particular areas, there are in fact conflicts of interest.)

Please note that § 6, c. 12, R. S. 1954, amended, provides, among other things, that the governor of this state may assume direct operational control over all or any part of the civil defense and public safety functions when the emergency is beyond local control. The conclusion must be that when the local organization is capable of controlling the emergency, such organization exercises "direct operational control over all or any part of the civil defense and public safety functions."

I find no language in the "Maine Civil Defense and Public Safety Act of 1949" reducing the responsibility of school officials (as enumerated in § 54 of c. 41, R. S. 1954, amended) in times of catastrophes or disasters.

In conclusion, though school officials advance the possibility that conflicts of interest might arise between local, county, and state civil defense units, none is shown; the plans and programs formulated by these units exist for the purpose of preventing such conflicts from arising. Local school officials should expect assistance from the local civil defense unit; the presumption being that the county unit will direct its attention to county functions. The county civil defense unit will concern itself with county buildings, leaving the towns to direct their concern towards so-called town buildings.

Please direct to my attention any present, specific conflicts in order that I may assist you in resolving them.

JOHN W. BENOIT, JR.
Assistant Attorney General

January 9, 1963

To: Niran C. Bates, Director of Public Improvements

Re: Educational Television

You have asked this office for an interpretation of the respective responsibilities of the University of Maine and the Director of the Bureau of Public Improvements in relation to the construction of educational television facilities under the provisions of Chapter 247 of the Private and Special Laws of 1961.

The fundamental basis on which this opinion rests is the proposition that educational television is a state-wide facility as opposed to a project for the benefit of the University of Maine.

This conclusion is based on four parts of Chapter 247.

1. Section 1 provides in the first sentence:

"There is created a Committee on Educational Television for the purpose of facilitating the development of educational television in this State."

This language which opens the Act indicates that the educational television program is for the whole state.

2. The composition of the Committee set forth in section 1 is another indication of the state-wide aspect of this program. The committee is made up of 7 members, one a representative of the State Department of Education; one a representative of the University of Maine, and five citizens of the State of Maine.

3. Section 3-A provides that the Governor and Council are the body authorized to accept gifts and federal grants-in-aid.

4. Section 4 provides in part:

"The University of Maine is authorized to . . . for the purpose of providing a *state-wide educational television network* for the transmission of educational television to pupils in the schools, colleges, university and adult audiences *throughout the state*;" (Emphasis supplied).

There can be no doubt when one reads these parts of the first four sections that the legislature intended to provide a state-wide television network provided at state expense by state agencies.

As further evidence of this conclusion, a reading of acts of the legislature authorizing bond issues will bear out this conclusion. Particularly does it become apparent in comparing Chapter 174, Private and Special Laws 1959, "An Act Authorizing the Construction of Housing for the University of Maine and the Issuance of not Exceeding \$10,000,000 Bonds of the State of Maine for the Financing Thereof" (hereinafter called U. of M. bond issue), with the Educational Television Act, Chapter 247, Private and Special Laws, 1961, (hereinafter called ETV bond issue).