

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**For The Calendar Years**

**1963 - 1964**

Question:

(2) If eligible for such aid, must the work be completed before occupancy by the different grade level groups?

Answer:

Yes. The work should be completed prior to occupancy.

The applicable provision of law is section 237-H of chapter 41, R. S., as amended. (The entire section is not quoted here for the reason of its extreme length.) The pertinent portions of section 237-H are:

" . . .

" 'Capital outlay purposes' as the term is used in this chapter shall mean the cost of new construction, expansion, acquisition or major alteration of a public school building, . . . the cost of furnishings and equipment, . . .

" . . .

"The term 'major alteration' as used in this section shall mean the cost of converting an existing public school building to the *housing of another* or additional *grade level group*, or providing additional school facilities in an existing public school building but shall not include the restoration of an existing public school building or piece of equipment within it, to a new condition of completeness or efficiency from a worn, damaged or deteriorated condition.

" . . . " (Emphasis ours).

There is no need to set forth the proposed renovations for the reason that all the items qualify for school construction aid as "cost[s] of converting an existing public school building to the housing of another . . . grade level group. . . ." The renovations will not affect the housing of high school grades; the former tenants of the building. Rather, the renovations will affect housing of grades 6, 7 and 8; other grade level groups.

The work may not be done over a period of years. Prior to the opening of the school in the fall, there should exist sufficient facts giving the indication that certain workmen have obligated themselves to perform the various tasks of renovation.

JOHN W. BENOIT

Assistant Attorney General

February 19, 1963

To: Honorable Bradford Wellman  
Majority Floor Leader  
House of Representatives  
State House  
Augusta, Maine

Re: L. D. 811 Resolve, Relating to Apportionment of Representatives from Penobscot County.

Dear Representative Wellman:

You have asked this office for an opinion as to the constitutionality of the above resolve. This resolve seeks to amend the 11th paragraph of Chap-

ter 81 of the resolves of 1961, as amended by Chapter 123 of the resolves of 1961. Chapter 81 of the resolves of 1961 is the resolve apportioning the House of Representatives in accordance with Article IV, Part First, section 2 of the State Constitution.

The second and third sentences of Article IV, Part First, section 2 say:

"The legislature shall, *within every period of at most ten years and at least five*, cause the number of inhabitants of the state to be ascertained, exclusive of foreigners not naturalized. The number of representatives shall, *at the several periods of making such enumeration*, be fixed and apportioned among the several counties, as near as may be, . . . " (Emphasis supplied).

Then the question may be framed as that asked the Supreme Judicial Court in 1851 by the House of Representatives.

"Has the Legislature constitutional power, after a general representative apportionment has been made, in conformity with the constitution, to alter the Representative Districts so established, until the next general apportionment?"

The question and answer appear in Opinion of the Justices, 33 Maine 587:

"When an apportionment of representatives has been made according to these provisions (Article IV, Part First, section 2) 'among the several counties,' it must remain without alteration for five years — for no new enumeration and apportionment can be made within that time, without a violation of that clause of the constitution which provides that the least period for an enumeration shall be five years."

Prior to this time in Opinion of the Justices, 3 Maine at 479 the justices said, in speaking of the same section of the constitution:

"And it was readily perceivable, that as *every apportionment made by the legislature must continue five years* and may continue ten . . . " (Emphasis added).

Likewise in Opinion of the Justices, 148 Maine at 409 the justices said:

"There is nothing in the Constitution which requires the Legislature to state the term of the continuance of any apportionment it makes. *If made, it must continue for at least five years.*" (Emphasis added).

From these three Opinions of the Justices it can be seen that our court has ruled that an amendment to a general apportionment cannot be made until five years have elapsed.

Therefore, we must conclude that Legislative Document 811, Resolve, Relating to Apportionment of Representatives from Penobscot County is unconstitutional.

Very truly yours,

GEORGE C. WEST

Deputy Attorney General