

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**For The Calendar Years**

**1963 - 1964**

February 20, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Contract and Joint Committee of Town of Turner and Leavitt Institute

Your memorandum of February 15, 1963, is answered below.

Facts:

The by-laws of Leavitt Institute provide, inter alia, that the superintending school committee of the Town of Turner shall serve as an executive committee for the trustees of the institute. By written opinion from this office dated January 15, 1962, your department was advised that Leavitt Institute did not qualify as a "public secondary school" under sec. 443(a), U. S. C. Title 20, for the reason that the superintending school committee had no authority to prescribe the curriculum of the institute though the law (c. 41, §54, R. S.) contemplates that such committee shall possess that authority. This same opinion indicated that if a joint committee were formed composed of the superintending school committee and an equal number of trustees and if a tuition contract were entered into between the town and the institute and if those requirements set forth in chapter 41, sections 125 through 129, inclusive, were met, then the institute would qualify as a "public school" under the National Defense Education Act of 1958.

Question:

Whether it is necessary to amend the by-laws of the institute thereby removing that section from the by-laws which sets up the superintending school committee as an executive committee for the trustees of the institute in order to give legal effect to the setting up of a joint committee?

Answer:

Yes, the by-laws should be amended.

Reason:

By-laws exist for the purpose of regulating and controlling the affairs of private corporations, unincorporated associations and other private bodies; they are the rules of action adopted for the government of groups of persons and entities. Because the office of a by-law is to regulate the conduct and define the duties of members towards the corporation, it is necessary that the by-laws be amended to give legal emphasis and meaning to the action desired by the corporation; action which presently finds no basis in the by-laws.

JOHN W. BENOIT

Assistant Attorney General

February 20, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: State Construction Subsidy — S. A. D. #2

Your memorandum of February 18, 1963, is answered below.

Facts:

The following changes are contemplated in the secondary school building in S. A. D. #2:

- (1) Abandonment of the present kitchen and cafeteria followed by construction of a new kitchen and cafeteria in another part of the building.
- (2) Expansion of the present home economics quarters.
- (3) Construction of a school library, where none exists at present.

This project results in the conversion of a balcony area.

Question:

Whether such changes qualify for state construction subsidy under chapter 41, section 237-H, Revised Statutes?

Answer:

The proposed changes do qualify for such aid.

Reason:

Abandonment of a school facility causes such facility to cease to exist for beneficial use. Later construction of a like facility in another part of the building qualifies for construction aid for the reason that such construction produces an additional school facility. The same reasoning applies to the construction of the school library. (See definition of "major alteration" in said section 237-H.)

The expansion of the home economics quarters will qualify for aid provided such expansion results in providing additional school facilities, i. e., an increase of facilities over former facilities offered.

JOHN W. BENOIT  
Assistant Attorney General

February 20, 1963

To: James L. Brown, Elementary Supervisor of Education

Re: Disposal of Milton School Building and Lot

Your memorandum of February 6, 1963, is answered below.

Facts:

The State of Maine presently holds title to school buildings and a lot located in unorganized territory, which property the State wishes to dispose of by sale. The Milton Bible Church desires to secure the property through its pastor who is a member of the Northeastern Gospel Crusade, Incorporated of Vermont.

Question:

- (1) Whether the Milton Bible Church possesses the legal capacity to take title to the property?

Answer:

No.

Question:

- (2) Whether the pastor of the church has the capacity to take in the name of either the Northeastern Gospel Crusade, Incorporated or the Milton Bible Church?