STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

February 28, 1963

To: Honorable Dwight A. Brown
Senate Chambers
State House
Augusta, Maine

Re: L. D. 440 — An Act providing County Funds for Insurance for Firemen

Dear Senator Brown:

You ask whether the above-mentioned proposed legislative measure, if passed into law, would be constitutional in its mandate authorizing the expenditure of county funds for the purchase of accident and disability insurance for firemen.

This bill would not be violative of any of the three provisions found in the Constitution of Maine, Article IV, Part Third, Section 16. This bill would not be an infringement of the right of home rule.

It is well established that the Legislature has the power to authorize the counties to expend funds. (See *Sawyer v. Gilmore*, 109 Me. 169 at page 186.)

We have grave doubts, however, as to the constitutionality of the emergency preamble for the reason that the necessary facts to constitute an emergency appear to be lacking. (See *Payne v. Graham*, 118 Me. 251.) L. D. 440 appears to state conclusions rather than the necessary facts which are required by Article IV, Part Third, Section 16, supra. This preamble could, of course, be amended to state the necessary facts constituting an emergency.

In conclusion, therefore, if the bill is amended to state the necessary emergency facts in accordance with the constitution, it would be the opinion of this office that it is not in violation of the constitution of this state or of the United States.

Sincerely,

WAYNE B. HOLLINGSWORTH
Assistant Attorney General

March 1, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: State School Construction Aid

Your memorandum of February 21, 1963 is answered below:

Facts:

A school committee proposes to develop land adjacent to the high school which would include the following undertakings: Construction of a football field; a track and field events area; tennis courts and outdoor basketball courts; a baseball field; a boys' physical education play area and a girls' physical education play area with a girls' athletic field.

Question:

Are the above developments eligible, jointly or severally, for state school construction aid?

Answer:

No. The proposals do not qualify either jointly or severally for such aid.

Reason:

The applicable provision of law is found in Section 237-H of Chapter 41, R. S. 1954:

> " . . . The term 'school building' as used in this section shall mean, but not be limited to, any structure used or useful for schools and playgrounds, including facilities for physical education . . . "

The Legislature's definition of "school building" contains the words "structure" and "facilities." Litigation involving these terms has produced the following definitions:

> "A tennis court was not a 'structure' within meaning of zoning by-law of town of Belmont which did not regulate the use of land, except so far as it had a building or structure thereon." *Williams v. Inspector of Buildings of Belmont.* 341 Mass. 188, 168 N. E. 2d 257.
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> "The words 'structure' and 'building' mean the same thing." *In re Willey,* 12 Vt. 359, 140 A. 2d 11.
>
> " . . . 'Facility' is not a technical word, but one in common use, and its meaning is to be found in the sense attached to it by approved usage. Roget's Thesaurus gives 'aid', 'assistance', and 'help' as equivalents of 'facility' . . . " *State v. Johnson,* 20 Mont. 367, 51 P. 820.

A football field is not a "school building" as that latter noun is defined in Section 237-H. The Legislature saw fit to use the word "structure" in defining the noun "school building" and by use of such word intended to encompass within the definition of "school building" those other structures used or useful for schools and playgrounds.

Note the opinion of this Department dated November 13, 1962 wherein you were advised that "playground equipment is an item which is the proper subject of state subsidy under the provision of R. S., 1954, Chapter 41, section 237-H." That opinion gives no reason why such equipment is eligible; no doubt the determination of eligibility was rested upon the belief that such equipment qualified as a structure used or useful for schools and playgrounds. In this respect, the fence surrounding the tennis court, the outdoor basketball backboards and other similar items might qualify for aid.

The words "including facilities for physical education" do not broaden the term "school building" beyond the import earlier expressed in the definition for the reason that a "facility" is an item giving aid and assistance to that which is already defined; the existence of a school facility does not suppose the creation of a new body but rather supposes the presence of new blood.

JOHN W. BENOIT, JR.
Assistant Attorney General

March 1, 1963

To: Honorable Donald O'Leary
House of Representatives
State House
Augusta, Maine

Re: Appropriation of Municipal Funds for Blood Bank Program