

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

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.

"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

Dear Representative O'Leary:

Your request for an opinion dated February 25, 1963, is answered below:
Question:

May municipal funds be raised and appropriated for a blood bank program under the heading of Civil Defense?

Answer:

No.

Reason:

A municipality may appropriate funds for civil defense. *R. S., c. 90-A, sec. 12, VII and sec. 12 of c. 12, R. S.*

Section 12 of the Maine Civil Defense and Public Safety Act of 1949 provides, among other things:

"Each political subdivision (county, city, town or village corporation) shall have the power to make appropriations in the manner provided by law for making appropriations for the *ordinary expenses of such political subdivision for the payment of expenses of its local organization for civil defense and public safety*. In making such appropriations, such political subdivision shall specify the amounts and purposes for which the moneys so provided may be used by the local organizations for civil defense and public safety." (Parenthesis and emphasis supplied).

"Civil defense and public safety" is defined in section 3 of the aforementioned Act. These words mean both "the preparation for and the carrying out of all emergency functions." Those functions do include medical and health services.

In order, then, that such appropriation be legally made certain pre-requisites must exist. The expenditure must be one which (1) is for the payment of expenses of the local organization and (2) for a Civil defense and public safety purpose.

According to the correspondence attached to your request for an opinion, the municipality would vote to raise an amount of money equal to an amount representing .30 for each person in the municipality. These moneys would be turned over to the Walking Blood Bank Association of Dixfield, Maine. These facts reveal no "expense of the local organization" or of "a civil defense and public safety purpose."

Very truly yours,

JOHN W. BENOIT,

Assistant Attorney General

March 1, 1963

To: Paul A. MacDonald, Secretary of State

Re: L. D. 204 — An Act Relating to Reciprocity Under Financial Responsibility Law.