

MAINE STATE LEGISLATURE

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April 1, 1963

Edward G. Hough, Esquire
844 Stevens Avenue
Portland, Maine

Dear Ed:

In your letter of March 25, 1963, you ask for an opinion as to the extent of personal liability of members of the Board of Trustees of Maine Maritime Academy for their actions. This is a broad question and must be answered in broad terms.

At the outset, it may be noted that there is no statutory law as to the liability of directors or trustees, and resort must be had to case law. I assume your question is limited to action taken by the Trustees on matters presented to them concerning the affairs of the Academy.

First, there is a distinction between matters of a governmental nature and matters of a nongovernmental nature. As to the latter, liabilities would be the same as those of directors of private corporations who must use ordinary and reasonable care, must not exceed the powers of the corporation nor their powers as officers, and are liable for fraud, or misappropriation or conversion of corporate assets, and generally are liable for negligence. See Fletcher Encyclopedia Corporations, Sec. 990.

As to the governmental functions of the trustees, the law relating to public officers seems the most analogous. As to matters submitted to a public officer's judgment or discretion, there is no liability for action taken in good faith, though erroneously. Stone v. Augusta, 46 Me. 138; Donahoe v. Richards, 38 Me. 392; Wilson v. Simmons, 89 Me. 242; Hovey v. Mayo, 43 Me. 322.

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But a trustee's official character is no protection for torts committed in the exercise of ministerial or nonjudicial duties. Chase vs. Cochran, 102 Me. 431; Ford v. Erskine, 109 Me. 164; Willey v. Ellsworth, 64 Me. 61; Plummer v. Sturdivant, 32 Me. 328; Brooks v. Jacobs, 139 Me. 371.

Laying out a public way was held in Stone v. Augusta to be a judicial act, but building a bridge (Chase v. Cochran) and a road (Ford v. Erskine) were held to be nonjudicial duties. A school committee deciding on the expulsion of a student was held in Donahoe v. Richards to be a judicial duty, but the failure of a manual training teacher to provide a student with a safe place to work was held in Brooks v. Jacobs to be in the course of a ministerial duty.

This appears to be the general applicable law. If you have any questions as to specific actions by the Board, I shall be glad to hear from you.

Sincerely yours,

Leon V. Walker, Jr.
Assistant Attorney General

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