

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

April 17, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: School Building Committee

Your memorandum of March 26, 1963, is answered below.

Facts:

A Maine town, at a special town meeting held on April 16, 1962, voted on business of the following tenor:

"Article 2. To see if the Town will vote to build an addition to the Penobscot elementary school." On this article the Town "voted to build an addition to the Penobscot Elementary School."

"Article 4. To see if the Town will vote to elect a school building committee to carry out any action adopted under Articles 2 and 3 or to act on anything relating thereto." On this article the Town "voted to elect a committee of seven to go to Augusta, have plans drawn to present at next meeting, get all information needed at Augusta, and present five bids at next town meeting."

[Article 3 dealt with an acceptance or a rejection of plans prepared by certain architects; the Town voted to reject the plans.]

At the annual town meeting on March 4, 1963, the Town voted an acceptance on the following article:

"To see if the town will vote to accept a contract bid for the construction of an addition to the elementary school according to the plans, specifications, and bids by the School Building Committee."

No other article appeared in the warrant concerning the committee. At this same meeting the Town voted to appropriate certain moneys from surplus and voted to raise and appropriate other moneys to meet, in part, the contract price; the balance of moneys over those appropriated were to be borrowed by the Town.

You indicate that the state's interest in this matter is predicated upon its desire to know if plans are being presented by a legally-constituted committee?

Questions Posed:

- (1) Whether the school building committee elected on April 26, 1962, continues to function until the school building addition is completed or did the committee cease to exist after the March 4, 1963, meeting by reason of the fulfilment of its assignment?
- (2) Provided the committee still exists may its members elect a chairman from the membership to fill the vacancy created by the resignation and removal from town of the previous chairman?

Opinion:

In *Drisko v. Columbia*, 75 Me. 73 (1883), the facts before the court revealed that a town had inserted the following article in a warrant for town meeting: "To see if the town will pay Charles A. Drisko a certain sum which was actually reimbursed to the town by his enlisting for three years." The court continued as follows:

"And the following vote was passed: 'Voted to pay a compensation to Charles A. Drisko of four hundred dollars in satisfaction of services he claims to have rendered the town for enlisting

in the United States service for three, instead of one year.' Is the vote within the purview of the warrant, in the light of the admission, upon the briefs of counsel, that no such reimbursement had ever been made to the town? We say it is not.

" . . . The vote calls for one thing, the warrant for another. This is not a case where an idea has been blindly or illiterately expressed. Both the warrant and vote are couched in clear and concise terms, and neither could be easily misunderstood."

See also *Stewart v. Inhabitants of York*, 117 Me. 385 (1918), wherein the court determined that a bridge building committee chosen by town vote had been given no legal power to employ counsel.

On November 3, 1925, this office forwarded an opinion to the department of education which involved powers of a building committee; that opinion contains language which applies to the present matter. I quote from the last paragraph of that opinion:

" . . . They were appointed for a specific purpose; they were authorized by the vote of the town to do certain things. They had no power to act in any other matter. The power to provide the equipment and furnishings was not given them by the town, hence they cannot act in this regard."

A reading of the vote of the Town upon Article 4 does not reveal any grant by the townspeople authorizing the committee to oversee construction of an addition to a school building. The town elected a committee and embellished it with certain directives. The committee had no power to act upon any other matter.

Because we find that the committee possesses no authority to oversee the proposed construction, the questions which you pose become moot. Nevertheless, we would not be remiss, we think, in opining that the committee has served its purpose and presently does not function.

JOHN W. BENOIT

Assistant Attorney General

April 23, 1963

To: E. L. Walter, Assistant Executive Secretary
Maine State Retirement System

Re: Definition of Payments made under Survivor Benefits Plan

Reference is made to your memo of April 19, 1963. You have asked for an opinion as to whether payments made under the so-called Survivor Benefits plan are payments to the widow or to the children or whether they are separable.

From the facts of the two cases named it is evident that Chapter 63-A, section 9 I B 1 (a) does not apply because neither deceased employee had 17½ years of creditable service at the time of his death.

It, therefore, follows that section 9 I B 1 (b) and (c) are the applicable provisions of the statute. The pertinent provisions of (b) read:

"A spouse, alive and not remarried at the time of the death of the member who has the care of unmarried children of the