

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

apt to be reached. *State v. Johnson*, 20 Mont. 367, 51 P. 820. In *State v. Cave*, 20 Mont. 468, 52 P. 200, the court was presented with the task of determining "the scope of the expression 'additional school facilities.'" That court said the following, among other things:

....

" . . . It seems to us that the words 'additional school facilities' embrace some at least of the means necessary to 'support' or 'maintain' schools. It is not to be inferred, however, from anything said in this opinion, that the purchase of lots, or building of school houses, or the removal thereof, or building additions thereto, is included within the meaning of, 'additional school facilities,' for the statute expressly distinguishes each of these purposes from the other and from such 'school facilities.' . . . We think 'additional school facilities' mean facilities in addition to or beyond those already possessed. . . ."

" . . . To provide, when reasonably necessary or convenient, more school rooms, is to furnish additional school facilities."

....

In *Cave* the court said that "the words 'additional school facilities' . . . certainly embrace more than apparatus or appliances for teaching." The court borrowed from Roget's Thesaurus which gives "aid," "assistance" and "help" as equivalents of the word "facility." To be sure, a school administrative office center would be of aid, assistance and help to the school district. The proposed office, then, is a facility and qualifies for aid with as much merit and according to the same guidance principles applicable to "more school rooms," i. e., that such facilities be "in addition to or beyond those already possessed" and when such facilities are "reasonably necessary."

JOHN W. BENOIT

Assistant Attorney General

May 21, 1963

To: Colonel Robert Marx, State Police

Re: Sunday Sales of Mobile Homes

You ask whether Chapter 134, § 38-A, R. S. 1954, as amended, is applicable to the provisions of Chapter 134, § 38-B, R. S. 1954, as amended. We answer in the negative.

Chapter 134, § 38-A, states:

"Local option. — In any city or town that shall vote as herein-after provided, it shall be lawful to keep open to the public on the Lord's Day and aforementioned holidays, other places of business *not exempted under section 38*. This provision shall not be effective in any municipality until a majority of the legal voters, present and voting at any regular election, so vote. The question in appropriate terms may be submitted to the voters at any such election by the municipal officers thereof, and shall by them be so submitted when thereto requested in writing by 100 legal voters therein at least 21 days before such regular election; nor shall it

be effective in any town until an article in such town warrant so providing shall have been adopted at an annual town meeting. When a city or town has voted in favor of adopting the provisions hereof, said provisions shall remain in effect therein until repealed in the same manner as provided for their adoption. (1959, c. 302, § 2. 1961, c. 362, § 2.)" (Emphasis supplied).

Section 38-B makes it illegal to sell mobile homes on Sunday. Section 38, the general "Sunday law" section lists many exceptions to the closing law. Section 38-A sets the procedure for a local option to keep open "other places of business not exempted under Section 38." In other words, municipalities are free to enlarge the list of exemptions, unless otherwise prohibited by law. Section 38-B is a specific mandate of the legislature, and is not subject to the local option provision. By its very existence, Section 38-B falls beyond the purview of the local option section.

In conclusion, Section 38-B is not affected by a vote of the municipality, pursuant to the provisions of Section 38-A.

Sincerely,

WAYNE B. HOLLINGSWORTH
Assistant Attorney General

May 22, 1963

To: Joseph T. Edgar, Deputy Secretary of State

Re: Recount of Local Referendum Ballots

You have received a request from two residents of a town for a recount of the referendum ballots voted on at a special town meeting election held to decide if the town shall join other towns in a School Administrative District.

You ask if the Secretary of State has jurisdiction to supervise a recount in such an election.

Answer: Yes.

The election was held pursuant to R. S. 1954, chapter 41, section 111-F, subsection IV. Under this subsection the School District Commission, after certain formalities have been performed, orders the question of the formation of the proposed School Administrative District to be submitted to the legal voters of the municipalities involved.

"The order shall be directed to the municipal officers of the municipalities which propose to form a School Administrative District, directing them to call town meetings or city elections, as the case may be, for the purpose of voting in favor of or in opposition to each article in the following form:"

There is nothing more in chapter 41 concerning the manner of holding the election. The statute contemplates a town meeting to be held in accordance with the general law or local charter, if any.

The town of Cumberland was granted a charter by Private and Special Laws, 1821, chapter 78. This act simply incorporated the town of Cumberland. It does not provide for any election procedures. Hence, town meetings would be governed by the general law in R. S. 1954, chapter 90-A.