STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

"Elsewhere, the courts have used the term municipal corporation as applicable to a county, *Tippecanoe County v. Lucas*, 93 U. S. 108; . . . "

There can be no question but the intent of the legislature is that aid from the Airport Construction Fund is available for the county constructing the airport with cooperation from a town.

GEORGE C. WEST
Deputy Attorney General

May 22, 1963

To: Asa A. Gordon, Co-ordinator, Maine School District Commission

Re: Towns Voting On Questions of School District Formation

Your memorandum of May 13, 1963 is hereby acknowledged.

Facts:

The residents of the territory within three municipalities desiring to form a school administrative district pursuant to Section 111-F of Chapter 41, R. S. 1954, as amended, made due application and held the requisite meeting set forth in said Section prior to voting upon the question of formation. In due course, the residents of each municipality cast votes upon the question of formation. All of the municipalities except one approved appropriate articles by majority vote.

Questions:

1. May the municipality which voted in the negative call for a new meeting to rescind its negative vote and to vote again upon the question of formation?
2. If the answer to question 1 is in the affirmative, must those municipalities which have already approved formation vote again upon the question?

Opinion:

Mechanics governing the formation of school administrative districts are set forth in Section 111-F and Section 111-G of Chapter 41, R. S. 1954, as amended. Note that IV of the former section requires that the School District Commission order the question of the formation to be submitted to the legal voters. Such order directs that the municipal officers call town meetings or city elections, as the case may be, for the purpose of approving or of disapproving the appropriate articles. Section 111-G contains language, inter alia, relative to the duties of the clerks of each municipality in the making of returns to the Commission after the residents have voted upon formation.

In *Bullard v. Allen*, 124 Me. 251, at page 261, our Supreme Judicial Court said, among other things:

"The plaintiff's claim, that the meeting of September 30 had no authority to reverse the action of the town taken on September 15, is of no avail under the circumstances of this case. The rights of third parties or other intervening rights had not been impaired. Our own court, in *Parker v. Titcomb*, 82 Me. 180, following the universal rule in such matters, has held that a town is free to act as it pleases within its legal scope. It may take action in one direc-

tion today and in another tomorrow provided it does not impair intervening rights."

In *Allen* the plaintiffs contended that a second town meeting "had no authority to reverse the action of the town" previously taken; and that the prior action was finalized. The court upheld the second action by the town.

Allen cited language from *Parker v. Titcomb*, 82 Me. 180, with approval. The Maine Court in *Titcomb* said, inter alia:

. . . .

"A town may reconsider its action at the same meeting or at a subsequent meeting if *seasonably done.* That is, if the action of the town hath not already *accomplished its purpose.* For, if the vote of a town once accomplishes its purpose, works out the intended result and hath spent its force, it cannot be reconsidered and taken back.

"(Here the Court stated the language quoted favorably in *Allen.*) There is a wide difference, however, between reconsidering action that has once taken *effect, and worked its result,* and, voting action to restore the original state of affairs by original and new proceedings." (Parenthesis and Emphasis supplied).

. . . .

In *Titcomb* the Court stated that the subsequent town meeting (in May) held for the purpose of reconsidering prior action in April was *ineffectual.* But the Court noted that the subsequent vote (to reconsider the previous vote) occurred after the first vote had "become effective and worked their purpose."

. . . .

"When the April meeting adjourned, its votes consolidating three of its school districts into and as part of district No. 9 became effective and worked their purpose. The territory of the three annexed districts became a part of the territory of the district to which they were annexed. Their organization as districts for further purposes were thereby abolished and extinguished. They were thereafterwards unknown as school districts in Farmington. They were as effectually abolished as though they had never been."

. . . .

(Note: A reading of *Titcomb* reveals that though the second [May] meeting was ineffectual, the legislature, Chapter 377, 1889 legalized the May action. The Court's action in this respect is interesting:

. . . .

" . . . If the act of the legislature can be considered as a division of the territory of the new district into fractions corresponding to the old districts, then the vote of reconsideration had become valid, *not from any force of itself,* but from a decree of the sovereign power of the State; and we think such to be the true consideration of the case. . . . " (Emphasis supplied).

. . . .

Continuing, the expression of the Court in both *Allen* and *Titcomb* allows the inhabitants of a municipality to reconsider the action of an earlier meeting provided:

(1) The subsequent meeting held for the purpose of reconsideration is seasonably done; or,
(2) Such prior action has not accomplished its intended purpose or result; or,
(3) The rights of third parties or other intervening rights will not be impaired by such subsequent meeting.

Because no district was formed due to the failure of one of the towns to affirm formation, a second meeting seasonably held in that town would be proper for the reason that there has occurred neither an impairment of intervening rights nor the accomplishment of an intended purpose; no district having been formed with attending rights and obligations.

Those municipalities which have already approved formation need not vote again on that question. Additional action would add nothing to the vote presently existing in those towns.

JOHN W. BENOIT
Assistant Attorney General

May 27, 1963

To: E. L. Newdick, Commissioner of Agriculture

Re: Fertilizer

We are in receipt of your request for an opinion as to the interpretation of Chapter 48, Section 29, paragraph I, subsection I, R. S. 1954, which states:

"I. Of any independent contractor while engaged exclusively in the transportation of seed, feed, fertilizer and livestock for one or more owners or operators of farms directly from the place of purchase of said seed, feed, fertilizer and livestock by said owners or operators of said farms to said farms, or in the transportation of agricultural products for one or more owners or operators of farms directly from the farm on which said agricultural products were grown to place of storage or place of shipment within 60 miles by highway of said farm."

You specifically ask whether "lime, when hauled to farms, would properly be classed as a 'fertilizer' within the meaning of the statute."

We answer your question in the affirmative. Webster's dictionary defines fertilizer as "a fertilizing *agent* or substance, especially a manure for land, as guano, superphosphate, etc." (Emphasis added.) It would appear, therefore, that anything that acts as a "fertilizing agent" would properly be classified as fertilizer, if actually intended for use as fertilizer. In conjunction with the above, Dr. Roland A. Struchtemeyer, Head of the Department of Agronomy at the University of Maine, writes:

"I, personally, visualize the role of limestone as being two-fold. By this I mean that limestone is added to the soil to change the acidity, or pH of the soil. When the pH of the soil is changed the effectiveness of the other fertilizer materials are increased and the biological activity in the soil is stepped up. These changes usually result in an increased plant growth.