

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

(2) When the legislature being in session, the Governor fails to sign such Bill or Resolve within the 5 days after presentation.

(3) When after being returned to the legislature within the 5 days it is passed by the requisite majorities over his objections.

(4) When, if the session of the legislature terminates by an adjournment before the expiration of the 5 days, he fails to return the bill with his objections within 3 days after their next meeting.

Second question: "2. Will you also kindly advise the Governor as to whether or not the five day provision for the Governor's consideration of a Bill or Resolve includes the day of receipt of the Act, or does the five day period begin the day following, for a period of five days, Sundays excepted."

The law seems clear that in construing the 5 day period in Article IV, Part Third, Section 2 of the Maine Constitution, time shall start the day following the presentation of the Bill or Resolve to the Governor, Sundays excepted. There is numerous law on this point and this office has previously issued an opinion to Governor Frederick Payne whereby the same conclusion was reached.

Very truly yours,

FRANK E. HANCOCK
Attorney General

June 27, 1963

To: Asa A. Gordon, Coordinator, Maine School District Commission

Re: Disposition of School Building in Seboeis Plantation by Condemnation

Your memorandum of June 20, 1963 is hereby acknowledged.

Facts:

Recently, Seboeis became a part of School Administrative District #31. Prior to the formation of the District, the Plantation operated a one-room school on property owned by a resident of the Plantation.

Questions:

- (1) If the building is transferred to the District and used for school purposes, may the Board of Directors, under the provisions of Section 15, take the land and a suitable playground by condemnation?
- (2) Or, if the building is not transferred to the School Administrative District, may the Plantation take the land and a suitable playground by condemnation?

Opinion:

Section 15 of Chapter 41, R. S. 1954, as amended, provides the following condemnation authority, *inter alia*:

"When a location for the *erection* or *removal* of a schoolhouse and requisite buildings has been legally designated by vote of the town at any town meeting called for that purpose or by the school directors of a school administrative district, . . . they may lay out a schoolhouse lot and playground, not exceeding 25 acres

for any one *project*, and appraise the damages . . . Any administrative unit may take real estate for the enlargement or extension of any location designated for the *erection or removal* of a schoolhouse and requisite buildings and playgrounds. . . ." (Emphasis supplied).

A leading text states the following relative to the construction of condemnation statutes:

" . . . When the power is granted, the extent to which it may be exercised is limited to the express terms or clear implication of the statute in which the grant is contained. In other words, statutes conferring the power must be *strictly construed*. Clear legislative authority must be shown to justify the taking. Authority cannot be implied or inferred from vague or doubtful language. When the matter is doubtful, it must be resolved in favor of the property owner. . . ." (Emphasis supplied).

Section 15, authorizes a town (or plantation; Chapter 10, Section 22, XIX, R. S. 1954) or the directors of a school administrative district to take real property for the purpose of constructing a schoolhouse and requisite buildings thereon or for the purpose of removing a schoolhouse and requisite buildings thereto. (The Section, through lack of good draftsmanship, appears to authorize condemnation of land in order to remove buildings on the land condemned; but we do not so interpret the Section.) After the taking of the realty, the municipal officers stake out a schoolhouse lot and playground. *Leavitt v. Eastman*, 77 Me. 117. We note that the prerequisites of the taking are either (1) location for construction of a schoolhouse and requisite buildings, or (2) location for the relocation of such buildings. We must conclude, that the facts given above present no prerequisite for taking of the realty by the school directors of the district.

The plantation may not take the land for the reasons above stated. Further, whether a plantation, at a given time, possesses rights of condemnation under Section 15 is somewhat vague. Section 15 speaks of an "administrative unit." Such "unit" is defined in Section 28, Chapter 41, R. S. 1954, as a "municipal or quasi-municipal" corporation "responsible for operating public schools." In *Means v. Blakesburg*, 7 Me. 133, our Supreme Judicial Court held that although plantations *may* raise money for the support of the poor, they are not *obliged* to do so. Our Legislature used the same language concerning the raising of money for support of the poor and raising money for support of the schools. There is, therefore, some doubt whether a plantation, at a given time, is "responsible for operating public schools" and thus clothed with condemnation powers.

The next to last sentence of Section 15 will not permit the taking of land for playgrounds alone. The Legislature used the word "and," preceding the word "playgrounds," rather than the word "or." *Words and Phrases*, "and."

In conclusion, because the given facts satisfy none of the Section 15 prerequisites, neither the directors of the district nor the plantation may take the land in question.

JOHN W. BENOIT

Assistant Attorney General