in Bradford, at end of opinion. ✓✓ yes

July 24, 1963

Kermit S. Nickerson, Deputy Commissioner Education

John W. Benoit, Assistant Attorney General

Requirements for Graduation

FACTS:

The trustees of a private secondary school have adopted a regulation requiring all seniors to successfully pass four subjects for that particular year. In order that a secondary school acquire State approval for attendance, tuition or subsidy purposes the graduation requirements of such school should include, among other things, 16 Carnegie units earned in grades 9 through 12 inclusive.

Several local municipalities cause their pupils to attend this private institution; and tuition moneys are paid the school by the municipalities.

It is possible, under this regulation, that a tuition student with more than the statutory amount of 16 Carnegie units would be denied graduation because of his failure to have passed four courses in the senior year.

QUESTION:

Whether the private school regulation is compatible with the statute as both relate to graduation requirements?

ANSWER:

Yes.

OPINION:

Our statute contains the following language relative to Carnegie units:

> ". . .No school shall be given basic approval for attendance, tuition or subsidy purpose . . ; unless it meets the following requirements:

" . . .

"VIII. The requirements for graduation include 16 Carnegie units earned in grades 9 through 12, inclusive, 4 of which shall be in English and 1 in American History."

A leading text defines graduation as "the completion of the prescribed course which entitles one to a diploma." 79 C.J.S., "Schools and School Districts."

Another text contains the following matter:

"The governing board of a school which is authorized to examine students and to determine whether they have performed all the conditions prescribed to entitle them to a diploma or other evidence of completion of the course of study exercises quasi-judicial functions, and in that capacity its decisions are conclusive, providing its action has been in good faith, and not arbitrary. . . ." 47 Am. Jur., "Schools," § 149.

VIII of the statute makes use of the word "include."

"The term 'includes' is ordinarily a word of enlargement and not of limitation."

"'Include' means to comprise as a component part, to enclose within, contain, embrace."

"'Include' has two shades of meaning. It may apply where that which is affected is the only thing included, and it is also used to express the idea that the thing in question constitutes a part only of the contents of some other thing. It is more commonly used in the latter sense." Words and Phrases, "Include."

> ". . . and they will not consider whether the regulations are wise or expedient, but merely whether they are a reasonable exercise of the power and discretion of the board. . . ."

In conclusion, we find no repugnancy between the school's regulation and the above cited statute relative to Carnegie units in high school graduation requirements.

John W. Benoit
Assistant Attorney General

JWB/slf

STATE OF MAINE
YORK, SS.

SUPREME JUDICIAL COURT OF
THE STATE OF MAINE

EDWARD L. CARON, JR., a Minor, who Brings this Action by and through ELIZABETH L. CARON, his Mother and Next Friend, of Biddeford, in the County of York and State of Maine,
PETITIONER

vs.

FINAL DECREE AND JUDGMENT

RAYMOND A. KENNEALLY, PAUL STEBBINS, WILLIAM POMERLEAU, ROGER C. NADEAU, J. FREDERICK WARNER, JOSEPH M. PATANE and LUCIEN DOYON, all of Biddeford, in the County of York and State of Maine
RESPONDENTS

This is an action of mandamus brought by Edward L. Caron, Jr., against the Superintending School Committee of the City of Biddeford, the Superintendent, and the Principal of Biddeford High School to compel the issuance of a diploma or certificate of graduation from such school. The plaintiff was represented by William P. Donahue, Esq., and the defendants by Waterhouse Spencer & Carroll, and Robert M. York, City Solicitor.

The alternative writ was issued, and the defendants answered on the ground that the petitioner had failed to complete four full Carnegie units of credit during his senior year which the defendants claim was in violation of an alleged rule #3 under the requirements for graduation from Biddeford

High School.

R.S. 1954, Chap. 41, Sec. 54, Par. I places the management of schools in the hands of the Superintending School Committee.

R.S. 1954, Chap. 41, Sec. 54, Par. II places upon the Superintending School Committee the duty of directing the general course of instruction in public schools.

By virtue of R.S. 1954, Chap. 41, Sec. 98, Par. VIII, as amended, one of the requirements for basic approval of a high school is that the requirements for graduation include 16 Carnegie units earned in grades 9 through 12, inclusive, 4 of which shall be in English and one in American History.

The defendants admit by answer that the petitioner at the completion of his academic year 1962-1963 had accumulated toward graduation a total of 16 1/4 Carnegie units earned in grades 9 through 12, inclusive, 4 of which were in English and one in American History. The defendants also concede that but for the presence of the so-called Rule #3 the petitioner would have received his diploma, since he had completed the minimum requirements of both the State of Maine and his own school in respect to the minimum number of points required for graddation. They contend, however, that in his senior year he failed to successfully complete four full units of credit.

The defendant contends that Rule #3 was never adopted by the School Committee, and if so, that it was an unreasonable rule.

The evidence shows that the promulgation of Rule #3 was never entered on the records of the School Committee.

It is well settled that records of judicial tribunals, as to the parties affected, are conclusive as to all materials contained therein of which the law requires a record. Goodrich v. Senate, 92 Me. 243. However, it is not expected that School Committees will act with great formality nor that their records be as full and explicit as those of a legislative body or of a court. Michaud v. St. Francis, 127 Me. 255, 258. Parol evidence is undoubtedly admissible, not for the purpose of contradicting the records of a School Committee but to supply omitted votes taken by the committee or to supplement the records in regard to omitted material.

It is a general principle of law that there is a presumption that official persons legally perform their duties until proof to the contrary is presented. Benson v. Newfield, 136 Me. 23 and cases cited. The School Committee has the duty of directing the course of study in the schools unde its jurisdiction. Donahue v. Richards, 38 Me. 376. A presumption exists that that duty was performed.

It was essential to the successful operation of this school that a curriculum of studies be prepared. This duty is cast upon the School Committee. A curriculum was prepared by the Principal at the request of the Superintendent, who after its preparation, presented it to the School Committee. It is preposterous to believe that the School Committee did not realize that the curriculum presented to them was not put into effect, and it is fair to assume that the committee, in the performance of their duties, tacitly approved of the same. To assume otherwise would leave the administration of the studies taught in the school in a sadly chaotic condition.

It is my opinion that the School Committee may make reasonable regulations for graduation under which more than the minimum requirements for graduation are necessary, and I have little doubt that a properly promulgated rule, including one prepared by another official and ratified by the School Committee, or even one tacitly approved by them, requiring a student to earn four units during his senior year, would not ordinarily be considered unreasonable. However, although Rule #3 was contained in the same exhibit as the curriculum, it was not the duty of the School Committee to prescribe such a rule, and no presumption arises that it was promulgated or ratified. In the face of the testimony of those members of the School Committee who were called to testify, and in view of the fact that there was no evidence that it had ever before been invoked with the knowledge of the members of the School Committee, I cannot find that it had their tacit consent, or that the rule was ratified.

This unfortunate controversy undoubtedly generated from the fact that the courses and rules were presented to the School Committee, or placed in the notebooks of the members of the committee, without, as far as the testimony shows, any action being taken thereon or discussion had. There is no question of bad faith on the part of the Superintendent or Principal in refusing to graduate the petitioner. Each was sincere in his convictic that he was following a properly established rule of the School Committee, and is to be commended for the conscientious performance of his duties.

I give little weight to the fact that copies of the curriculum and [illegible] sent out from the Principal's office to the students and [illegible]. I do not consider of any significance the record of the votes

of the various meetings of the School Committee in May, 1963, after the controversy started. These votes, taken at that late date, could not, to the detriment of the petitioner, ratify a rule that had never been promulgated.

Although the question has not been raised in argument, the applicability of mandamus is now considered.

> "Mandamus is an appropriate and necessary proceeding where a petitioner shows: (1) that his right to have the act done, which is sought by the writ, has been legally established; (2) that it is the plain duty of the party against whom the mandate is sought to do the act, and in the doing of which no discretion may be exercised; (3) that the writ will be availing, and that the petitioner has no other sufficient and adequate remedy."
> Webster v. Ballou, 108 Me. 522, 524.

Other cases in which this principle has been expressed are Nichols v. [illegible], et als. 113 Me. 282, 284; Sawyer v. County Commissioners, 116 Me. 408, 410; Steves v. Robie, 139 Me. 359, 362.

The question of the appropriateness of mandamus to compel the issuance of a diploma upon graduating from public schools has never been raised in the state, and has been rarely raised in other jurisdictions.

> "[W]here the applicant has been found, by the proper authorities, to be duly qualified, and the issuance of a diploma does not depend upon discretionary acts, but only upon ministerial acts, the performance of which are arbitrarily refused, it seems that mandamus will lie, even though the issuance of the diploma is not required by statute."
> 34 Am. Jur., Sec. 207, 976, 977

> "It does not appear in the instant case what rules, if any, are provided by defendants in regard to issuing diplomas to those who may complete the course. True, there is no statute expressly requiring the issuance of a diploma in such a case; but our schools are

> ...maintained by taxation, and our public schools are, in a sense, public, and those in authority and who are responsible for the government of the schools are, in a sense, engaged in a public duty. And we think and hold that, even without a statute, there is an implied duty on the part of such officers to issue written evidence of plaintiff's graduation in the form of a certificate, a diploma, or the like, to those who have satisfactorily completed the prescribed course of study, unless for sufficient reasons they are justified in withholding it."
> Valentine v. Independent School Dist. (Iowa), 6 A.L.R. 1525, 1529.

There is no specific statutory duty on the part of school officials to issue a diploma or certificate of graduation from a high school. However, the granting of such evidence of attainment has for generations been a tradition in our New England communities. Such a diploma is a treasured possession of its recipient and in many cases is framed and preserved by the recipient and his family for years, and sometimes for generations, after its issuance. I find that it is the implied duty of the School Committee, the Superintendent, and the Principal to issue evidence of graduation in the form of a diploma or certificate of graduation to those who have satisfactorily passed the required subjects.

If the facts in the case had indicated some discretion on the part of the school officials, the writ would not be in order. The court is reluctant to interfere with the administration of a public school and cannot interfere in the reasonable disciplinary requirements of school officials. However, the pleadings in the case show that the only reason for withholding the diploma or certificate was the fact that the petitioner failed to pass four units during his senior year. No other question was involved. The petitioner had received the necessary 16 units required

for his graduation.

The writ is necessary to secure a substantial right to the petitioner, and he obviously has no other adequate remedy.

The Superintending School Committee of the city of Biddeford, the Superintendent of Schools of the city of Biddeford, and the Principal of Biddeford High School are ordered to issue to the petitioner a diploma or certificate of graduation from Biddeford High School.

A peremptory writ shall issue forthwith upon judgment becoming final.

s/ Cecil J. Siddall
Justice, Supreme Judicial Court

Dated February 25, 1964

Decree (in effect) suppl 6 7-24-63 Prior 98

STATE OF MAINE
YORK, SS.

SUPREME JUDICIAL COURT OF THE STATE OF MAINE

[illegible] L. CARON, JR., a Minor, who [illegible] this Action by and through [illegible] L. CARON, his Mother and Next Friend, of Biddeford, in the County of York and State of Maine
PETITIONER

vs.

[illegible] A. KENNEALLY, PAUL STEBBINS, [illegible] LORTIE, ROGER C. NADEAU, [illegible] HENDRICK WARNER, JOSEPH M. [illegible] and LUCIEN LOYON, all of Biddeford, in the County of York and State of Maine
RESPONDENTS

AMENDMENT TO DECREE

The decree in the above matter is amended by striking out the word "defendant" in the fourth line from the bottom of page 2 and substituting therefor the word "petitioner."

Cecil J. Siddall
Justice, Supreme Judicial Court

Dated February 26, 1964