

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

nation prescribed. . . . Any youth who otherwise meets the requirements of this section for admission to grade 9 shall be entitled to the payment of his tuition in any approved secondary school offering part or all of the program of grades 9 through 12. . . . " *R. S. 1954, c. 41, § 107.*

" . . . No school shall be given basic approval for attendance, tuition or subsidy purpose within the provisions of this chapter unless it meets the following requirements:

"
"VII. Consecutive grades. It is organized to include not less than 2 consecutive grades from 7 to 12. . . .

"VIII. The requirements for graduation include 16 Carnegie units earned in grades 9 through 12. . . . " *R. S. 1954, c. 41, § 98.*

And it is the Legislature that has the duty of requiring the various administrative units to provide "for the support and maintenance of public schools." Constitution of Maine, Article VIII.

Section 102 of c. 41, R. S. 1954, makes mention of a "course of study in the free high schools." A "graduate" is one who has received an academic certification signifying the completion of a prescribed course of study in a school. *Webster's New Collegiate Dictionary, 1961. Words and Phrases, "Graduate."* The person graduated from the public school system of the State has, by reason of such graduation, availed himself of the right provided by law. Our statutes have not yet created any right of tuition-free attendance to the public schools for the person graduated from such schools. And Chapter 41 of our Revised Statutes does not provide for graduate schools in our public school system.

Second Question Posed:

2. May a town refuse to pay tuition for a student to attend a post-graduate course in another town when the sending town operates no secondary school?

Because of the answer and reason given under the first question above, the second question is rendered moot.

JOHN W. BENOIT

Assistant Attorney General

August 2, 1963

To: Hayden L. V. Anderson, Executive Director,

Division of Professional Services

Re: Revocation of Teachers Certificates; Sufficient Cause; Documentation.

Your memorandum of July 24, 1963, is hereby acknowledged.

Facts:

A superintendent of schools has written a letter to your office containing a resume of facts which, if true, reveal misconduct on the part of a male school teacher towards high school girls. The letter indicates that the superintendent of schools, after hearing a rumor relative to this matter from a member of the superintending school committee, made an investigation

which consisted of a conversation with the high school librarian into whose classroom the student ran crying and complaining; a conversation with a teacher who had accompanied the librarian to the classroom of the denounced teacher where both heard him admit he had "made passes" at the girl; and an actual conversation with the male teacher wherein the teacher admitted his conduct was improper.

The subject teacher signed no statement regarding the event. He presently holds a teaching position in New York State.

Maine statutes provide for the revocation of a teacher's certificate for "sufficient cause." *R. S. 1954, c. 41, § 184.*

Question:

The facts have been presented in letter form. Will such manner of presentment suffice as a basis for determining the existence or the non-existence of a "sufficient cause" to revoke the teacher's certificate?

Answer:

Such presentation, though sufficient, may well be supplemented by further statements.

Reason:

This opinion concerns itself with a question of the mechanics of revocation of a public school teacher's certificate rather than with the subject of the dismissal of a public school teacher. The applicable law is found in *R. S. 1954, c. 41, § 184*:

" Provided further, that any certificate granted under this or any preceding law may for sufficient cause be revoked and annulled. Nothing in this section relative to revocation of teacher's certificates shall be retroactive. Any teacher whose certificate has been revoked shall be granted a hearing on request before a committee; one member to be selected by the commissioner, the second by the teacher involved and the third by the other two members. The hearings before this committee may be public at their discretion and their decision shall be final."

Too, this opinion is involved with a question of administrative procedure, i. e., what type of fact presentation is required to be presented under the statute above cited.

On June 4, 1943, this office rendered an opinion to the Commissioner of Education on a related matter. Then, the question was whether there existed sufficient grounds to support revocation of a teacher's certificate. The opinion after stating the existing statute in substantially the same form as it exists today, contains the following matter, *inter alia*:

"The language is sufficiently broad to give you authority to revoke the certificate of any teacher when in your *opinion* such revocation is justified.

. . .

"There is not sufficient *evidence* presented to me in the *documents* from your office . . . (to advise whether there exists grounds for revocation). There is an *administrative problem*, and it can become a matter of interest to this department in case only of mal-administration or mis-administration." (Parenthesis and emphasis supplied).

The Commissioner of Education is an executive officer of the State.

"The governor and the commissioner of education are executive officials charged with protecting the interest of all educational groups and institution." *78 C. J. S., Schools and School Districts*, § 86.

" . . . The Commissioner shall be executive officer. . . ."
R. S. 1954, c. 41, § 4.

Teacher's certificates are mere privileges granted by the State and revocable by the State at its pleasure.

"The state has plenary powers with respect to teachers' certificates. A teacher's certificate is not a property right, and it has none of the elements of a contract between the teacher and the state. . . . A certificate is a mere privilege conferred by the state . . . Speaking of licenses, the Supreme Court of the United States has said: 'The correlative power to revoke or recall a permission is a necessary consequence of the main power. A mere license by a State is always revocable.'" The Courts and the Public Schools, Edwards, 1955, Univ. of Chicago Press.

See also *Marrs v. Matthews*, Tex., 270 S. W. 586, to the same effect.

"The legislature in the proper exercise of its power may provide for a general system of licenses or certificates for persons qualified to teach in the public schools. Likewise, since teachers' licenses or certificates, like other licenses, possess none of the elements of a contract protected by the due process clause of the Fourteenth Amendment, but merely confer a personal privilege, the legislature may likewise provide for the revocation of such licenses at its pleasure. The right to license teachers or to revoke their licenses may be delegated by the legislature to a ministerial board or officer." *47 Am. Jur., Schools*, § 110.

The Commissioner is entitled to rely upon the assistance of others. *R. S. 1954, c. 41, § 11, 87.* And he may adopt the conclusions based upon evidence heard by others.

" . . . it has been held that executive officers, being entitled to rely on the assistance of others, may adopt conclusions based on evidence heard by others. . . ." *67 C. J. S., Officers*, § 103 (b)

In conclusion, therefore, the Commissioner of Education may rely upon signed statements of a material person or persons containing a concise and objective reporting of facts gathered from observation. The material person or persons may be the appropriate superintendent of schools; the applicable superintending school committee; a teacher; or a student. Thus, in the present matter we suggest that the Commissioner secure signed statements from the two teachers as to what transpired in order to supplement the report of the superintendent of schools. Statements may be secured from students when other documentation is lacking. In other words, the Commissioner should possess the same kind of documentation to revoke a certificate as he possesses when granting a certificate.

JOHN W. BENOIT

Assistant Attorney General