

MAINE STATE LEGISLATURE

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August 22, 1963

Kernit S. Nickerson, Deputy Commissioner

Education

John W. Benoit, Assistant

Attorney General

Tuition Rate Overcharge; State Subsidy

Your memorandum dated July 29, 1963, is hereby acknowledged.

FACTS:

A town, lacking the facilities necessary to educate its secondary school students, entered into an oral agreement (through its superintending school committee) with a local academy for the education of these students on a tuition charge basis covering the school year 1961-1962. A legal tuition rate is defined as that charge which equals the receiving school's average cost per pupil for the current fiscal year. c. 41, § 10B, R. S. 1954.

An examination of the academy's expenditures involving the average cost per pupil for the school year 1961-1962 reveals that the academy collected an overcharge from the town and that though the town has requested either a refund of the money or a credit against the 1963-1964 tuition charge, the academy has refused to comply with the request (to the point of threatening legal action to retain the money) and has made it clear that unless the town's claim to the overpayment is waived no new tuition students will be accepted from the town. Too, the institution has set a flat rate tuition charge of \$475 for the 1963-1964 school year. (The legal tuition rate for the year 1963-1964 will not be known before July 1, 1964; the end of the fiscal year.)

QUESTIONS:

Because of the plural number of questions and the attending possibility of confusion arising from but one joint discussion thereon, we present each question with a separate reasoning for the attending answer.

QUESTION #1:

In view of the fact that no contract existed between the town and the academy for the 1961-1962 school year, would it be legal for the town to authorize the school committee to waive the overcharge for that year?

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ANSWER:

For the reason stated, we respectfully decline to answer the question.

REASON:

Your question supposes the absence of a contract between the town and the academy. We have not been given a sufficient presentment of facts upon which to base an opinion that either there existed a contract or that no contract was in existence. A contract may be oral or written; and the facts are determinative whether a contract exists or not.

Because your question gives recognition that some action by the town may be taken, the townfathers should seek the assistance of local counsel; the matter is one of local government.

QUESTION #2:

Would it be legal for the town to vote at a special town meeting to authorize the school committee to contract with the academy for secondary school privileges for 1963-1964 at a fixed rate of \$475?

ANSWER:

Because of the reason stated, we respectfully decline to answer the question.

REASON:

The question smacks of local import. Though we were possessed with that desire to assist an administrative unit through the issuance of a legal opinion, yet--having rendered same--we would, without the authority to give that guidance on the local level which might well be requested in order to cause the opinion to crystalize, i.e., the drafting of the warrant, article, etc. Thus, having no jurisdiction to perfect the local conclusion in the second instance, we cannot postulate in the first instance.

QUESTION #3:

Respectfully, we redraft the question as follows: Shall the basis for the computation of the amount of state subsidy payable to the town include the amount of overcharge paid by the town to the academy?

ANSWER:

Yes, provided such overcharge was rightly due the academy according to c. 41, § 107, § 108, R. S. 1954.

REASON:

The payment of state subsidy to an administrative unit having no approved secondary school is subject to statutory conditions.

" . . . the expenditure of any administrative unit for schooling of pupils as provided in this section shall be subject to the conditions of sections 107 and 108 for the purposes of state subsidy to the administrative unit under the provisions of section 237-E, c. 41, § 105, R. S. 1954 (Emphasis supplied.)

The conditions set forth in § 107 contain, among other things, a reference to "legal tuition charge."

" . . . and pay the trustees, superintending school committee or school directors of the receiving school the legal tuition charge thereof."

We note a restriction upon the annual tuition charge for those tuition students attending a school having one hundred or more students and offering at least two occupational courses:

" . . . the annual tuition shall not exceed 125% of the average cost per pupil in all secondary schools of the State for the current fiscal year. . . ."

An exception exists for schools without these prerequisites:

" . . . the tuition shall not exceed the average cost per pupil in all secondary schools of the State for the current fiscal year."

The section (§ 107) then directs that the administrative unit pay "said tuition" in stated installments to the receiving school and to, annually, raise a sum sufficient to pay such tuition charges.

Further, we note that § 108 contains a relevant expression upon tuition charges as follows:

" Tuition charges for each pupil may be paid by administrative units to an amount not exceeding the receiving school's average cost per pupil for the current fiscal year; except that payments in excess of said average cost may be made by vote of the sending administrative unit, but such payment by an administrative unit for any pupil for any one year shall be subject to the limitations of section 107."

The section goes on to indicate the manner of determining "the average cost per pupil."

We give particular emphasis to the further language in § 108 relative to the Commissioner's payment of state moneys to the receiving school upon default of payment of tuition by the sending school and charges the sending administrative units' apportioned fund with the amount. Note that the State pays only what is rightly due the receiving school.

" . . . the Commissioner shall pay such accounts, or so much thereof as he shall find to be rightly due. . . ."

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In conclusion, an administrative unit having no approved secondary school and having authorized its appropriate school officials to contract with either another administrative unit or an academy for the secondary education of its students is authorized to pay a legal tuition charge to the receiving school. The determination of what shall constitute a legal tuition charge requires an examination of the facts within the framework of § 107 and § 108 of c. 41, R. S. 1954. It cannot be said that the payment of a tuition charge which was in excess of the receiving school's average cost per pupil was, because it constituted an overcharge, not a legal tuition charge; the facts must reveal a violation of the § 107 limitations. If in fact there existed the payment by a town of a tuition charge in excess of the legal tuition charge, the state subsidy is payable only upon the amount of legal tuition charge so paid (we concern ourselves in this opinion with but a portion of the basis for subsidy computation.) If the Commissioner, according to the Maine statute, is to pay the receiving school only those moneys it rightfully charged the defaulted sending school, it seems logical that the Commissioner should not pay subsidy moneys to the sending school for amounts of tuition it did not rightfully pay.

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