

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

for the truck phase of the business and Transporter plates for the movement of other self-propelled machinery?

Answer:

Yes.

There is nothing in the law to prevent the issuing of dealer and transporter plates to one person. If a person qualifies under both sections 26 and 26-A, he is entitled to both types of plates.

GEORGE C. WEST

Deputy Attorney General

September 19, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Residence for School Purposes; Tuition Privileges

We acknowledge your memorandum of August 2, 1963.

Facts:

A physician presently employed by the United States Government as a doctor attached to American embassies abroad and who presently is serving in Saigon, owns a house in Bethel, Maine where, formerly, he practiced medicine. This physician is assigned to foreign stations for two-year periods. During his absence from Bethel, the doctor rents his house and pays the taxes on it. Of the doctor's five children; two are in attendance at college; two now are enrolled at Gould Academy in Bethel; and the remaining child is with the parents in Saigon. Doctor says that he considers Bethel as his legal residence.

Bethel causes certain of its pupils to attend Gould Academy pursuant to tuition arrangements allowed by statute.

By law this State, through the Commissioner of Education, reimburses the administrative units (to the extent of ½ of that amount paid by the administrative units) for tuition expenditures *R. S. 1954, c. 41, § 108*. Section 8 indicates that the State is to reimburse the administrative unit for tuition expense which the latter "shall have been required to pay."

Question:

The question you posed: "Are his children eligible for tuition payment by the Town of Bethel during the time he is serving abroad?" calls for this office to formally express itself upon a local matter. Respectfully, we reframe your question: Should the State reimburse the Town of Bethel for the tuition expense paid pursuant to the given facts?

Answer:

Yes.

Reason:

If, either (1) the tuition has not been paid by the administrative unit, or (2) if paid, the amount was not required to have been paid, the State is to make no indemnification. *R. S. 1954, c. 41, § 108*. What can be said is that in the first instance there is nothing to indemnify and in the second instance the administrative unit is not entitled to ask for indemnification. Thus, the query is whether the Town of Bethel was required to pay for the tuition of the doctor's two children attending Gould Academy.

Maine statutes give to every person of requisite age the right to attend the public schools in the administrative unit in which the person's parent or guardian has residence. *R. S. 1954, c. 41, § 44*. Section 44 defines residence as "the administrative unit where *the father maintains a home for his family*." (Emphasis supplied.) Free tuition privileges arise when the administrative unit wherein the "*parent or guardian maintains a home for his family*" does not support and maintain an approved secondary school. *R. S. 1954, c. 41, § 107*. (Emphasis supplied.) Note the similarity of language of the underlined portions of our statutes. Unless the doctor maintained a home for his family in Bethel the Town was not required to pay tuition to Gould Academy.

Webster's New Collegiate Dictionary defines "maintain" as: "To continue or preserve in or with; to carry on."

We interpret the words "maintains a home for his family" as being synonymous with maintenance of a domicile.

"Eminent courts hold that statutes relating to public schools should receive a liberal construction in aid of their dominant purpose which is universal elementary education. . . . The domicile of the 'parent or guardian' determines the town or district wherein the pupil has a legal right to free school privileges. . . ." *Shaw v. Small*, 124 Me. 36.

The doctor intends to return, someday, to Bethel; he maintains the house through payment of real estate taxes and by having a regard for the upkeep of the property.

Government officials residing abroad do not, generally lose their original domicile.

"Ambassadors, consuls, and other public officials residing abroad in governmental service do not generally acquire a domicile in the country where their official duties are performed, but retain their original domicile. . . ." *28 C. J. S., Domicile, § 12*.

In conclusion, the doctor maintains a domicile in Bethel and as a result thereof, Bethel properly expended tuition moneys re the doctor's two children attending Gould Academy.

JOHN W. BENOIT

Assistant Attorney General

September 23, 1963

To: Ernest H. Johnson, State Tax Assessor

Re: Application of Sales Tax to Refund Gasoline

Facts:

The State Tax Assessor has been deducting sales tax on refunds for gasoline purchased under section 166, Chapter 16, R. S., and the 101st Legislature enacted Chapter 367, P. L. 1963, amending section 160, Chapter 16, R. S. by inserting the word "commercial" before the words "motor boat" in two places, and amended section 167 of said chapter by inserting the words "and pleasure motor boats not used for commercial purposes," the State Tax Assessor had been deducting sales tax from refunds of 6c of the 7c tax for nonhighway use, and the refund of 6c on tax consumed in commercial boat