STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

What is special mobile equipment? Chapter 22, section 1, has the following definition:

> " 'special mobile equipment' shall mean *every self-propelled vehicle not designed or used primarily for the transportation of* persons or *property* and incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, stone-crushers, air compressors, power shovels, cranes, graders, rollers, well-drillers, and wood-sawing equipment used for hire. The foregoing enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this section;" (Emphasis supplied).

A reading of the underlined portions clearly indicates that dump trucks are not within the definition of Special Mobile Equipment. Dump trucks are self-propelled vehicles designed for and used primarily for the transportation of property.

GEORGE C. WEST
Deputy Attorney General

October 3, 1963

To: Frank T. Kelly, R. S., Executive Secretary, Board of Hairdressers

Re: Registration Fee for Students of Schools of Hairdressing and Beauty Culture

Facts:

Under an amendment to the laws relating to hairdressers passed in 1963, the State Board of Hairdressers has ruled that all students enrolling on or before September 20, 1963, shall have the right to complete their training provided that they have filled out and returned to the Board an application with a fee of $3.00 for a certificate of registration as students.

Five students in a school of hairdressing and beauty culture have questioned the ruling of the Board.

The Board has asked three questions which will be stated and answered separately after the general question is answered.

Question:

Is the Board correct in ruling that students already enrolled in a school prior to the effective date of the law must register and pay the fee required under the new law?

Answer:

No.

Reason:

P. L. 1963, chapter 158, section 6, adds three new paragraphs to chapter 25, section 222. The third added paragraph reads as follows:

> "Students to be accepted shall have reached at least the age of 16 and have completed the 10th grade in a secondary school. An enrollment record of each *new* student admitted to a school shall be sent to the secretary of the board on the first day of each month, accompanied by a registration fee of $3 for each *new* student. The

board shall furnish each student registered a certificate of registration as a student. Said certificate of registration shall expire 12 months from date of issue." (Emphasis supplied).

There are two separate matters stated in this paragraph. They are (1) the qualification and (2) the registration of students entering a school of hairdressing and beauty culture.

The Board has interpreted the first to mean that all students entering beauty schools as new students on and after September 21, 1963 (the effective date of the law) shall be, at least 16 and required to produce proof of completing the 10th grade. This is a correct interpretation of the first sentence of the above-quoted paragraph.

The Board then interpreted the second sentence to cover students already enrolled prior to September 21, 1963, as well as those enrolling on or after that date. So much of the Board's interpretation as relates to students already enrolled prior to September 21, 1963, is incorrect.

The legislature may enact retroactive laws as long as they do not affect vested rights. *Augusta v. Waterville*, 106 Me. 398, and many other cases. Unless a clear intent is shown, it is presumed to have prospective operation only. *Carr v. Judkins*, 102 Me. 506, and many other cases.

There is no clear intent shown to make this statute retroactive or retrospective. In fact, the language of the second sentence indicates a clear legislative intent to enact a prospective statute only. Note the use of the word "new." Certainly a "new student" is one enrolled for the first time in a school after the passage of the law. A student who has been previously enrolled and was an active student on September 21, 1963, cannot conceivably be classified as a "new student."

The Board, being in error, has collected illegally a registration fee from students who were active students in schools of hairdressing and beauty culture on September 21, 1963.

Question No. 1:

Are all students required by law to have certificates of registration as such?

Answer:

No:

Reason:

The question is interpreted to mean "certificates of registration as a student" under section 222. Only those "new students" described above are required to have such a certificate. The Board may, if it wishes, issue such certificate to "old students" but cannot charge a fee for such certificate or registration.

Question No. 2:

Does the Board have the right to refuse to credit hours and time spent in school for those students failing to make application to procure such certificates?

Answer:

Yes, as qualified in the Reasons.

Reasons:

As the last paragraph of section 222 applies only to students enrolling on or after September 21, 1963, this answer applies to only those students.

Section 215, second paragraph, authorizes the Board to make rules and regulations "prescribing the requirements for the . . . operation, maintenance . . . of any school of hairdressing and beauty culture." Hence, the Board may, by rule or regulation, provide for not giving credit hours to those students failing to make application. It might be noted that if the Board is satisfied that the failure to apply is the fault of the operator of the school, that students should not be penalized.

Question No. 3:

Is the operator or manager in violation of this section if he allows students to continue training without such certificates?

Answer:

Yes, as qualified.

Reasons:

The above answer carries the same qualification as the answer to No. 2.

The statute implies that the school will submit an enrollment record of new students on the first day of each month. The duty being placed on the school, the operator would be at fault if he fails to submit such a record. Failure to submit an enrollment record by the operator of the school would then be a violation of this section.

GEORGE C. WEST
Deputy Attorney General

October 9, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: State Subsidy on School Construction Located Upon Leased Land

Your memorandum of September 4, 1963, is acknowledged.

Facts

The officials of a school administrative district are contemplating the construction of a school building upon leased land. The lease is one for a ninety-nine year period commencing on September 2, 1949.

Question:

Whether the State should pay subsidy to the school district for capital outlay it expended in the construction of a school building upon leased land?

Answer:

Yes.

Reason:

State aid for school construction is paid pursuant to R. S., c. 41, § 237-H. The section defines a capital outlay expenditure as the cost of new construction, expansion, acquisition, or major alteration of a public school building; the cost of all land or interest in land of any nature or description for such construction. (We need not set out the other expenditures presented in the section.)

Your question, put another way, asks whether the State can look behind the cost of new construction of a public school building and withhold subsidy because of the fact that the building is determined to be located upon leased land. Section 237-H does not admit of such an examination.