

# MAINE STATE LEGISLATURE

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October 23, 1963

Kermit S. Nickerson, Commissioner

Education

John W. Benoit, Assistant

Attorney General

Revocation of Teacher's Certificate; Is Limited Revocation Possible?

Your memorandum of October 8, 1963 is acknowledged.

FACTS:

A male teacher holding a Maine Teaching Certificate plead guilty to the crime of sodomy in the Cumberland County Superior Court on May 24, 1963. The court imposed a sentence of not less than one year nor more than five years to be served in the Maine State Prison, but suspended the same and placed the individual on probation for a two-year period.

The Commissioner of Education, upon learning of these facts, revoked the teacher's certificate pursuant to R. S., c. 41, § 184, as amended.

The revocation became effective July 29, 1963. The teacher's certificate was due to expire July 1, 1964.

A committee formed pursuant to R. S., c. 41, § 184, heard the teacher's appeal on September 26, 1963. The committee is withholding its decision pending receipt of answers to the questions set out below.

QUESTIONS:

1. How far, under the statute, may the committee go in supporting a revocation for a limited period of time?
2. If the committee can support a revocation for a limited time, is the teacher's certificate automatically renewed at the end of the period? Or by what procedure could the teacher secure certification? (The certificate in question would normally expire during the period of revocation.)

ANSWERS:

1. A limited revocation is not possible.
2. The second question is, therefore, moot.

REASON:

The applicable provision of law re revocation of a teacher's certificate is as follows:

"Sec. 184. Certificate; examination; regulations; revocation. . . . Provided further, that any certificate granted under this or any preceding law may for sufficient cause be revoked or 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 Any teacher whose certificate has been revoked shall be granted a hearing on request before a committee; one member to be selected by the commissioner, the second by the teacher involved and the third by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 2 members. The hearings before this committee may be public at their discretion and their decision shall be final." R. S., c. 41, §184, as amended.

Section 184, above quoted, authorizes the commissioner of education to revoke or annul a teacher's certificate if there is a sufficient cause for revocation. To revoke an instrument is to "annul or make void by recalling or taking back, cancel, rescind, repeal, reverse." Black's Law Dictionary, Fourth Edition, "Revoke." See also: Words and Phrases, "Revoke." Thus, the commissioner in the present matter cancelled the teacher's certificate; he rescinded it; he took it back; and he repealed it.

This action of revocation of teacher's certificates is an act conferred solely upon the commissioner of education. The commissioner possesses the power (by statute) to issue teacher's certificates; and the power to revoke such certificates is a necessary correlate. We note that a statute authorizes the commissioner of education to "formulate all rules and regulations necessary for the carrying out of the provisions" of section 184. R. S., c. 41, § 186. Surely, the Legislature did not intend that the commissioner of education formulate rules and regulations which another would

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put to use; but such an occurrence results if a person other than the commissioner of education is deemed to possess these powers of revocation.

. . . .

"The revocation must be by the officer or board having that power under the statute. The power may be granted to a particular officer in express terms, or the power may be implied from the duty placed on that officer in general terms to 'elevate the character and qualification of teachers by all means in his power' or from a reading of the entire school law and reference in some of the sections to a possible revocation of the certificate which can be explained on no other ground than that the power is granted to the officer named." 76 C.S.S., Schools and School Districts, § 165a.

. . . .

A "limited revocation" is an ambiguity of words. We have seen that the revocation of a certificate is a cancellation of the instrument, i.e., that the certificate is made void; it is rescinded; and it cannot be said to continue to exist after its revocation. A "limited revocation" is an impossible event for the reason that one cannot render something void and, at the same time render the same thing valid; it is either void or it is not void. So, we state that the committee is without authority in the law to revoke the certificate for a limited period of time.

The following action is available to the committee:

1. Affirm the action of the Commissioner; or
2. Reverse the action of the Commissioner.

The first action requires that nothing further be done by the commissioner. The second action requires that the commissioner

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issue another certificate to replace the one revoked. The committee is not concerned with a matter of "certificate suspension" for the reason that the Commissioner's revocation of the certificate (pursuant to law) precludes the existence of the instrument upon which to work the suspension. Again, only the Commissioner can legally issue a teacher's certificate.

Respectfully submitted,

John W. Benoit  
Assistant Attorney General

JWB/alz