

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

results of the applicant's examination have been given, a permit to practice barbering under the supervision of a person registered to practice barbering "

As stated in § 230-K, a barber who fails to renew his license in any year must take an examination. Hence, he is qualified for examination and, if he satisfies the residence requirement, he may be issued a permit which is good until the results of the examination have been given.

There is no expression such as "master barber" in the statute. Hence, it is assumed that it is meant to include a "person registered to practice barbering." The formerly licensed barber who operates under the permit authorized by § 230-J must operate under the supervision of "a person registered to practice barbering."

GEORGE C. WEST
Deputy Attorney General

February 4, 1964

To: Philip R. Gingrow, Director, Banks and Banking

Re: Validity of Retail Installment Contracts Subject to MVSF Act Entered Into by Unlicensed Retail Sellers

Facts:

During the examination of a trust company recently by our examiners it was observed that the institution had purchased retail installment contracts, the subject matter of which was motor vehicles, from an unlicensed retail seller.

Question:

Does the purchase of a motor vehicle retail installment contract by a sales finance company from an unlicensed retail seller void the contract?

Answer:

No.

Reason:

R. S. 1954, ch. 59, sections 249 to 260, known as The Motor Vehicle Sales Finance Act sets up a licensing procedure for certain sales finance companies and retail seller. Banks, trust companies and industrial banks, though defined as sales finance companies and subject to sections 249 to 260, are not required to be licensed.

Any sales finance company or retail seller who engages in their respective businesses without a license may be punished by a fine not exceeding \$500, section 258, I.

In the language of the court in *Burbank v. McDuffee*, 65 Me. 135, "It (the statute) does not make the sale void, unless by implication, and that a forced one. But forfeitures and the confiscation of honest debts are not to be implied. They must be the results of express legislation, and not a matter of inference."

Hence, it follows that the contract is valid, even though the retail seller may be fined for failing to have a license.

Note:

Section 250 I, requires a retail seller to be licensed.

Section 250 II, requires him to file application.
Section 250 III, specifies his license fee.
Section 250 IV, requires a license to be conspicuously displayed.
Section 250 V, provides for the Bank Commissioner to issue a license to "a sales finance company." No mention is made of issuing a license to a retail seller.

GEORGE C. WEST
Deputy Attorney General

February 5, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Responsibility for Education of Trainable Children

Your memorandum of January 29, 1964 is acknowledged.

Facts:

The 1954 Revised Statutes, Chapter 41, Sections 207-A to 207-I, inclusive, exist for the expressed purpose of providing educational opportunities for handicapped or exceptional children.

"Sec. 207-A. Purpose. It is declared to be the policy of the state to provide, within practical limits, equal educational opportunities for all children in Maine able to benefit from an instructional program approved by the state board of education. The purpose of sections 207-A to 207-I is to provide educational facilities, services and equipment for all handicapped or exceptional children below 21 years of age who cannot be adequately taught with safety and benefit in the regular public school classes of normal children or who can attend regular classes beneficially if special services are provided. Special classes in public schools are to include educable children only."

The responsibility of administrative units (hereinafter called 'units') in this area is delineated as follows:

"Sec. 207-F. Responsibility of administrative units. Every administrative unit is responsible for appropriating sufficient funds to provide at least the same per capita expenditure for the education of handicapped or exceptional children as is provided for the education of normal children. This appropriation is to be expended for programs of special education at either the elementary or secondary level under the supervision of the superintending school committee or school directors or for other programs approved by the Commissioner."

A number of handicapped and exceptional children who reside in a particular unit are attending a special school sponsored and operated by a corporation located outside the unit's school system; which special school in no way is connected with any public school system. The Department of Education has approved the programs of the school being attended by the pupils. Although the school has billed the unit pursuant to Section 207-F (quoted above), the unit has refused payment; and has claimed that its responsibility is limited to educable children and that the special school is not under its supervision.