

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

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.

Question:

Whether the unit is liable to the school for payment of the local per capita cost of these pupils residing in the unit and attending the school?

Answer:

Yes.

Reason:

The unit's refusal to pay is based upon two reasons; (1) Its responsibility is limited to educable children; and (2) The school is not under the unit's supervision.

Reference to "educable children" is found in section 207-A: "Special classes in public schools are to include educable children only." This reference cannot be taken as a restriction upon an administrative unit's responsibility delineated in Section 207-F.

The program of the school has been approved by the Commissioner; and such approved program is but one of the means made available to handicapped and exceptional children through which educational facilities are realized. Section 207-F.

That the Legislature did not intend to leave the education of handicapped or exceptional children entirely with administrative units is amply expressed in Sections 207-A to 207-I. The Legislature acknowledged the possibility that administrative units could not cope with Legislative directive in Section 207-A; and, thus, authorized the Commissioner to approve programs existing apart from a unit's school system. Such programs would be available to children of several administrative units; thereby assuring a sufficient attendance as to make more practicable the existence of the program.

The unit has failed to show a reason why it should not remit to the school those moneys for which every administrative unit is held accountable pursuant to Section 207-F.

JOHN W. BENOIT

Assistant Attorney General

February 10, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Purchase of Liability Insurance by Town for Protection of Teachers;
Use of Public Funds.

Your memorandum of January 29, 1964 is acknowledged.

Facts:

Your memorandum states that this Office, on two occasions (October 16, 1946; September 1, 1949), rendered opinions to your Department outlining the subject of the liability of school officials and teachers. You state that these opinions indicate that a teacher and public official may be held liable for acts of negligence and also for negligent inaction. You indicate you are mindful of *Brooks v. Jacobs*, 139 Me. 371, and of its holding that the relationship of teachers to their pupils is one of "in loco parentis" and that a school teacher is liable for personal acts of misfeasance or non-feasance if he fails to discharge a duty owed to an injured person.