

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

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.

Some Maine communities purchase insurance covering teachers and officials; and such expense is later included with school expenditures reported to the State for subsidy purposes.

Question:

Whether the State is authorized to expend subsidy to administrative units upon the cost of liability insurance acquired by the units for the protection of their teachers?

Answer:

No.

Reason:

The State expends subsidy pursuant to R. S., c. 41, § 237-A to 237-H, as amended. The plan is denoted a "foundation program"; and such program is defined in § 237-C. That section does not authorize the payment of subsidy by the State for insurance expense of an administrative unit incurred by the unit for the protection of its teachers.

Please note our opinion forwarded to your Department January 16, 1962 stating, among other things, that:

"An amendment to Section 237-A of Chapter 41, R. S. 1954, would be necessary to include such annuity premiums as part of the foundation program for subsidy."

JOHN W. BENOIT

Assistant Attorney General

February 13, 1964

To: Wallace E. Brown, Deputy Secretary of State, Automobile Division

Re: Conviction of Motor Vehicle Laws by Plea of Nolo Contendere

Facts:

A person was charged with a violation of a motor vehicle operation law. He appeared in a municipal court and pleaded "Nolo Contendere." The judge filed the case upon payment of costs assessed at \$10. The Secretary of State's office has assessed points based on a conviction and has given notice of hearing to suspend his license for excess points. The person protests that he was not "convicted" of a violation.

Question:

Does the entering of a plea of nolo contendere and its acceptance by the judge constitute a conviction?

Answer:

Yes.

Reasons:

Our court has stated in a number of cases that a plea of nolo contendere has the same effect as a plea of "guilty." In *State v. Cross*, 34 Me. 594, the court said:

"No person can be punished for crime, except upon the verdict of a jury, or upon a plea of guilty or of nolo contendere."

Probably the best and most clear statement of the effect of this plea is set forth in *State v. Herlihy*, 102 Me. 310.