

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**For The Calendar Years**

**1963 - 1964**

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.

"The plea of nolo contendere is an implied confession of the offense charged, the judgment of conviction follows that plea as well as the plea of guilty. And it was not necessary that the court should adjudge that the party was guilty, for that follows by necessary legal inference from the implied confession. *Commonwealth v. Horton*, 9 Pick. 206. A plea of nolo contendere, when accepted by the court, is, in its effect upon the case, equivalent to a plea of guilty. . . . If the plea is accepted it is not necessary or proper that the court should adjudge the party to be guilty, for that follows as a legal inference from the implied confession." *Commonwealth v. Ingersoll*, 145 Mass. 381.

The fact that the judge took some action following the plea is clear indication that he accepted the plea. It was not necessary that he make a formal finding of "guilty" or that he assess a large fine or a jail sentence.

The offering of the plea and its acceptance by the judge constituted a conviction. Hence the action of Secretary of State's office was proper.

It is very obvious that a plea of "guilty" will produce the same results.

GEORGE C. WEST

Deputy Attorney General

February 24, 1964

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

Re: Notice of Examination for Instructor of Hairdressing

Facts:

An applicant for an examination as an instructor was given an examination without the 10-day notice as stated in chapter 25, section 224. Apparently two members of the board were in agreement about giving the examination. The third member was not in accord.

Question:

Must an applicant for any instructor's examination be given the 10-day notice stated in chapter 25, section 224?

Answer:

No.

Opinion:

The purpose of a notice of the holding of an examination is to apprise all persons interested of the time and place of holding such examination. It is in the law to prevent the board from holding surprise examinations and preventing some applicants from participating because of no knowledge of the holding of an examination.

However, chapter 25, section 224 applies only to examinations of applicants for registration as hairdressers. It does not apply to examinations for instructors' certificates of registration.

Section 222 in the 4th paragraph provides in the first sentence:

"The board shall make rules and regulations for the examination of applicants for certificates of registration as instructors of hairdressing and beauty culture."