

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

instance there would be at least one rider who has full control over speed and direction of travel, namely the operator or driver. Lack of full control by a rider is a prerequisite for a "mechanical ride."

JEROME S. MATUS

Assistant Attorney General

April 7, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Responsibility of an Administrative Unit for Educable Children

Facts:

A municipality has adopted a regulation that pupils must be seven years of age in order to be eligible for admission to an educable class. The reason given by the administrative unit for the promulgation of such a regulation is that the school officials feel that such children are too young, mentally, to profit from special class education.

An educable child who is over five years of age, but who is less than seven years old, is in attendance at an approved private school which conducts classes for exceptional or handicapped children, including classes for educable children. The child's parents are requesting that the municipality pay tuition to the private school. Tuition is an item subsidized by the State.

Question:

Whether the administrative unit's regulation is valid so that the entity avoids payment of tuition?

Answer:

No.

Reason:

Applicable statutory provisions are:

"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."

"Sec. 207-B. Definitions. The term 'handicapped or exceptional child' shall mean any child under 21 years of age able to benefit from an instructional program approved by the State Board of Education whose parents or guardian maintains a home for his family in any administrative unit within the State, and whose educational needs cannot be adequately provided for through the usual facilities and services of the public schools, because of the physical or mental deviations of such child."

"*Sec. 207-C. Administration.* The general supervision of the education of all children of school age in the State, including handicapped or exceptional children, is the responsibility of the Commissioner of Education. . . ."

"*Sec. 207-D. Instruction.* The Commissioner may approve the attendance of handicapped or exceptional children at special schools such as the Maine School for the Deaf, Pineland Hospital and Training Center and Perkins Institute for the Blind in Watertown, Massachusetts, or at such other schools or institutions as he may designate. He may also approve education at either the elementary or secondary level for handicapped or exceptional children through home instruction, hospital instruction or special services."

"*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."

"*Sec. 44. School age.* . . . In the public schools of the State only those children who are or will become 6 years of age on or before October 15th of the school year shall be admitted to grade one.

In schools which offer a one-year childhood education program prior to grade one, only those children who will be 5 years of age on or before October 15th, of the school year shall be admitted.

In schools which offer a 2-year childhood education program prior to grade one, only those children who will be 4 years of age on or before October 15th of the school year shall be admitted. All children who have been enrolled in one or more years of childhood education programs prior to grade one before July 1, 1956, shall be allowed to continue regular advancement notwithstanding the provisions of this section.

Subject to the provisions of this section and subject to such reasonable regulations as the superintending school committee or school directors shall from time to time prescribe, every person between the ages of 5 and 21 shall have the right to attend the public schools in the administrative unit in which his parent or guardian has residence. . . ."

As Commissioner of Education, you are charged (by legislative mandate) with the general supervision of the education of handicapped or exceptional children, *inter alia*. *R.S., c. 41, § 207-C*. An appreciation of that responsibility has caused you to inquire whether the municipality's regulation is proper. We answer in the negative.

The Legislature, in defining a handicapped or exceptional child, used the words "any child under 21 years of age." *R.S., c. 41, § 207-B*. Too, this same age reference is found in Section 207-A. Thus, the matter of age requirement is settled by the Legislature.

In Maine, a school committee's duties are prescribed by statute; and those duties do not permit that committee to alter the age requirements prescribed by the Legislature. *R. S. c. 41, § 54.*

In the absence of an express age limitation, a school committee may fix the age requirement. *79 C. J. S., Schools and School Boards, § 448.* But the Maine Legislature has set statutory age requirements. *R. S., c. 41, § 44, § 207-A, § 207-B.*

The regulation promulgated by the municipality, when practiced, works to the detriment of the exceptional and handicapped children of the community. Too, promulgation of the regulation necessarily resulted in the school committee applying itself to a field of endeavor (mental health) without first having acquired the requisite experience.

"In an increasing number of jurisdictions the responsibility of the local board does not end with exclusion of an exceptional child. Often it must send the child to a neighboring district where facilities are available. Payment of expenses for tuition and transportation in such cases is normally determined by the statutes." *Legal Aspects of School Board Operation*, Hamilton and Reutter, 1958, Columbia University.

Tuition expended by the municipality pursuant to *R. S., c. 41, § 207-A - § 207-H* is a subsidizable item.

JOHN W. BENOIT

Assistant Attorney General

April 9, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Teacher Retirement

Facts:

A local school committee has promulgated a regulation providing for the compulsory retirement of public school teachers prior to age 70. The Maine Revised Statutes, Chapter 63-A, decrees a statutory procedure for retirement entitled "Maine State Retirement System"; and this System, inter alia, sets the compulsory retirement age at 70. *R. S., c. 63-A, § 6, I, B.*

Question:

Whether a local school committee has the authority to legally establish and enforce a regulation making public school teacher retirement compulsory prior to age 70?

Answer:

No.

Reason:

Applicable provisions of law taken from Chapter 63-A are set forth below:

"Sec. 1. Definitions.

. . . .

"'Employee' shall mean any regular classified or unclassified officer or employee in a department, including teachers in the state teachers colleges, and for the purposes of this chapter, teachers in the public schools. . . ."