

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

eral town meetings are being conducted pursuant to a single petition filed with the State Department of Education.

Question:

Whether plural action of the town upon the question of district formation is supported by legislative mandate?

Answer:

No.

Reason:

Section 111-F, IV, of chapter 41, Revised Statutes, provides that the Department of Education (successor to the School District Commission) shall direct petitioning municipalities to vote "in favor of or in opposition to" prescribed articles. Section 111-G of the aforementioned chapter prescribes that the Department of Education shall make a finding of fact upon the vote. Because the vote is designated as the basis for the finding of fact, plural voting implies plural, independent finding of fact.

Appreciation of the practical problems involved in plural voting necessitates our advising the State Board of Education that findings of fact are to be based upon the initial vote of the petitioning municipalities; and that they are to remain passive with respect to plural voting by the municipalities. If municipalities desire to re-vote the question of district formation, they should again petition the State Board of Education pursuant to R. S., c 41, § 111-F.

JOHN W. BENOIT

Assistant Attorney General

April 24, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Legal School Entrance Age

Facts:

A Maine town has requested permission (of the Department of Education) to conduct a special one-year childhood education program for children who will be five years of age between October 15 and December 31 of the school year. Children would be tested and evaluated, and those children meeting prescribed standards would be allowed to attend the special program to be conducted concurrently with the regular kindergarten classes. Children completing the special program, who are adjudged sufficiently prepared and matured for admission to grade one, would be admitted to grade one even though they would not attain six years of age on or before October 15.

Questions:

- (1) Whether such a project is legally permissible under R. S., c. 41, § 44?
- (2) Whether it is legal to place a pupil, who has participated in this special project and who is judged sufficiently prepared and matured, in a grade-one class the following year even though the pupil will not be six years of age by October 15?

Answers:

- (1) No.
- (2) No.

Reason:

Applicable provisions of law are:

"*Sec. 44. School age; kindergartens.* 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. . . ." *R. S., c 41.*

A one-year childhood educational program (prior to grade one) can legally admit only those children attaining five years of age on or before October 15th of the school year. Thus, because the proposed project is to be a one-year course, the statute has not been met for the reason that the plan would admit children not attaining age five until after October 15th of the school year. *R. S., c. 41, § 44* (second paragraph). We answer your first question by stating that a program of one year does not conform to the statute. *R. S., c. 41, § 44.*

A child not attaining age six on or before October 15th of the school year cannot be admitted to grade one. *R. S., c. 41, § 44* (first paragraph). The answer to your second question is in the negative.

Question:

Your memorandum poses a further question not related to the above facts:

Whether a pupil who has completed the childhood educational program (sub-primary) in regular course; who is of legal age to enter grade one; who has been promoted to grade one; and who is considered advanced for grade one work, may be advanced to grade two without completing a year in grade one?

Answer:

Yes.

Reason:

The Maine Statutes provide as follows:

"*Sec. 54. Duties.* Superintending school committees and school directors shall perform the following duties:

"VIII. Determine what description of scholars shall attend each school, classify them and transfer them from school to school where more than one school is kept at the same time." *R. S., c. 41.*

We advance the following material located in a leading text in the field of Law:

"Sec. 484. Grades or Classes and Departments.

"c. Assignment of Pupils to Grades or Classes. Under a power to prescribe necessary rules and regulations for the management and government of the schools, a school board may require a classification of the pupils with respect to the branches of study they are respectively pursuing and with respect to the proficiency or degree of advancement in the same branches, having regard also to their physical and mental capacity, and may make rules governing methods of school work; and a parent has no right to interfere with the board's exercise of its discretion and demand for his children instruction in certain classes or grades against the judgment of the board. . . ."

"d. Promotion and Demotion.

"Under its general power to prescribe rules for the school government, a school board may prescribe rules governing tests and examinations for promotion. Double promotion of a pupil from one grade to the second higher grade without attendance in the intervening grade is discretionary with the board, . . . " 79 *C. J. S., Schools and School Districts.*

In view of the statutory expression located in R. S., c. 41, § 54, VIII, and the developed case law reported in *Corpus Juris Secundum*, the local school board possesses authority to promote a qualified student from one grade to the second higher grade without attendance in the intervening grade.

JOHN W. BENOIT

Assistant Attorney General

May 5, 1964

To: Earle H. Hayes, Executive Secretary, Maine Retirement System

Re: Status of Employees of Soil Conservation Districts

Facts:

Revised Statutes, chapter 34, creates a state soil conservation committee and soil conservation districts. By statute, the districts "constitute an agency of the state and a public body corporate and politic." The districts are given authority to employ personnel, if and when funds are available.

Question:

Are the employees of a soil conservation district eligible for membership in the Maine State Retirement System?

Answer:

Yes.

Reason:

The retirement law, chapter 63-A, sets forth, in general, three classes of persons who are eligible for membership.

1. Regular classified or unclassified officer or employee in a department. *C. 63-A § 1*, "employee."