

# MAINE STATE LEGISLATURE

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May 15, 1964

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Education

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State Aid for School Construction; Eligibility

FACTS:

The City of Bath, Maine has recently completed the construction of two school buildings. The cost of the construction was met through the sale of bonds. The bond issue did not provide sufficient revenue to complete the grading of the site. The City must now appropriate funds to complete the grading over a two or three year period. The Maine Statutes provide for State aid for certain school construction, R. S., c. 41, § 237-H; and the City has inquired whether the project will qualify for State aid.

QUESTION:

Whether the City's contemplated expenditure for the grading of the site qualifies for State school construction aid pursuant to R. S., c. 41, § 237-H?

ANSWER:

No.

REASON:

Applicable statutory provisions are;

"Sec. 237-H. State aid for school construction.

. . . The commissioner shall allocate state financial assistance to School Administrative Districts on school construction. . . . No financial assistance shall be paid until the school construction has been completed and a full report of the cost of said construction and other expenses for capital outlay purposes is made to the commissioner. . . . On the basis of the reports on file in the office of the commissioner. . . the commissioner shall determine the total amount to be paid to all of the School Administrative Districts and

other eligible administrative units in that year, for capital outlay purposes. . . .

" 'Capital outlay purposes' as the term is used in this chapter shall mean the cost of new construction, expansion, acquisition or major alteration of a public school building . . . and such other expense as may be necessary and incidental to any construction, expansion, acquisition or major alteration of a public school building and the placing of such a building in operation.

" The term 'school building' as used in this section shall mean, but not be limited to, any structure used or useful for schools and playgrounds, including facilities for physical education.

"The term 'major alteration' as used in this section shall mean the cost of converting an existing public school building to the housing of another or additional grade level group, or providing additional school facilities in an existing public school building but shall not include the restoration of an existing public school building or piece of equipment within it, to a new condition of completeness or efficiency from a worn, damaged or deteriorated condition."

On March 1, 1963 we formally informed the Education Department that the contemplated construction of a football field; a track and field events area; tennis courts and outdoor basketball courts; a baseball field; a boys' physical education play area and a girls' physical education play area with a girls' athletic field, some years following the completion of a new high school, did not qualify for State school construction aid pursuant to R. S. c. 41, § 237-H, for the reason that the work was not upon a "school building" as that word is defined in § 237-H.

The present question does not require any discussion of the definition of "major alteration". The performance of the work will not result in the conversion of "an existing public school building to the housing of another or additional grade level group"; and neither will the completed work provide "additional school facilities" in the structures. Therefore, in order that

the subject-project qualify for State subsidy, the expenditure of the City must be capable of meeting the requirements set forth in the statutory definition of "capital outlay purpose".

Unless the contemplated site work can be identified as either "new construction", or an "expansion", or an "acquisition" of "a public school building", no State aid can be expended. Grading of the site would not qualify as "an acquisition of a public school building". Webster's New Collegiate Dictionary, 1961, defines the noun (acquisition) as: "1. Act of acquiring. 2. A thing acquired." Black's Law Dictionary, 4th Ed., defines the term as set forth below:

"acquisition. The act of becoming the owner of certain property; the act by which one acquires or procures the property in anything. (Citing cases) . . . ." (Parenthesis supplied.)

The site in question is already owned by the City; and the grading of same will not vest additional equities of ownership in the City. Too, the subject-project would not qualify as an 'expansion of a public school building'. Webster's New Collegiate Dictionary, supra, defines the noun (expansion) as: "1. Act or process of expanding, or state of being expanded; dilatation. . . ." The word expansion is synonymous with the word enlargement.

"Expansion. The word 'expansion' is a much used and well understood word and has been defined as synonymous with enlargement. State ex rel. Dunker v. Spink Hutterian Brethren, 90 N.W. 2d 365, 378, 77 S.D. 215. Words and Phrases, Permanent Edition.

The bounds of the site are not to be enlarged by reason of an interior improvement. Continuing, a grading of the site would not qualify it as new construction. A construction is a new creation.

"Construction. . . . The creation of something new, as distinguished from the repair or improvement of something already existing. . . ." Black's Law Dictionary, supra.

The grading of the site would amount to a physical improvement or repair of the soil; and would not result in the creation of something new. Pertinent case law defining new construction is:

"New Construction. . . . Work of removal of trees, brush, and shrubs from both sides of drainage ditch bank was 'repair work' and not 'new construction'. McGuire v. Voight, 49 N.W. 2d 472, 474, 242 Iowa 1106.

"The adding to a schoolhouse of a second story is 'new construction'. . . . Murphy v. Duffy, 124 A. 103, 105, 46 R.I. 210".  
Words and Phrases, supra.

We conclude (this paragraph) by stating that the grading of the site would not qualify for State aid as either new construction, or expansion, or acquisition.

Even assuming that the proposed work could be legally identified as either new construction, or expansion, or acquisition, State aid would be withheld unless the project concerned "a public school building". Note the definition of public school building in § 237-H:

"The term 'school building' as used in this section shall mean, but not be limited to, any structure used or useful for schools and playgrounds, including facilities for physical education." (Emphasis supplied.)

Except for the phrase, "but not be limited to", appearing in the definition of public school building, the noun (public school building) would have a restricted meaning, i.e., "structure". Certainly, the subject-project does not qualify as a structure! The presence of the aforementioned phrase ("but not be limited to") should not be taken as a legislative license permitting a wide latitude in amendments to the definition. While considering the use of the term (public school building), continuous reflection must be given to the words; ". . . as used in this section shall mean. . .". The scope of the use of the term is restricted; but the degree of restriction is unknown.

In conclusion, the question whether the site grading years after completion of a new school building would qualify for State subsidy requires (1) an ascertainment of legislative intention; and (2) the application of that intention to the facts. We have stated that the proposed project would not qualify for State aid. We are helped to this conclusion by a realization that the facts present a justiciable issue for

a court of law. Certainly, the Commissioner of Education is, in such an instance, entitled to a court adjudication upon the question prior to his disbursement of State moneys. Conversely, payment of the subsidy would render the question moot. The "rights" of the City to subsidy, if any there exist, may be capable of definition by way of declaratory judgment upon refusal of the State to pay subsidy following completion of the work. R. S., c. 107, § 38-50.

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JWB/eh