STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

The legislative intent is clearly expressed. There is no ambiguity. By the use of the word "foregoing" the legislature clearly stated that loans bearing interest in excess of that permitted by sections 210 to 227 may be enforced under the particular circumstances stated in the third sentence. Further than that by the use of the words "The foregoing shall not apply" the legislature also stated that enforcement of such loans may be by any person, whether licensed by sections 210 to 227 or not. The word "foregoing" must refer to both preceding sentences. It cannot be interpreted otherwise.

It is concluded that a person or corporation need not be licensed under sections 210 to 227 to enforce a loan made legally in another state having a law similar in principle to Maine, to a person then a resident of that state and now a resident of Maine.

GEORGE C. WEST
Deputy Attorney General

June 12, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Compulsory School Attendance

Facts:

In June, 1964, an elementary school student will complete the eighth grade and will attain 15 years of age in September, 1964. The student's parent (father) has notified the superintendent of schools that his son will not attend school after June, 1964; and that he will tutor his son through use of the American School Correspondence courses. The family lives in a School Administrative District, #28, which has a contract with the Town of Bucksport for secondary school privileges. Conveyance is provided to Bucksport High School.

The Maine Statute requiring school attendance is R. S., c. 41, § 92:

> "Every child between the 7th and 15th anniversaries of his birth and every child between the 15th and 17th anniversaries who cannot read at sight and write legibly simple sentences in the English language and every child between the 15th and 16th anniversaries who has not completed the grades of the elementary schools shall attend some public day school during the time such school is in session. . . . "

You state in your memorandum that the Department of Education has interpreted Section 92 to require all children between the 7th and 15th anniversaries of their birth to attend secondary school even though the elementary school program may have been completed prior to age 15.

You also state that in administrative units where no secondary school is operated or where no such school is provided, it has been the opinion that attendance outside the unit could not be compelled. In the present case, District #28 holds a contract with Bucksport for secondary school privileges, which contract provides for school attendance in the same fashion as though a secondary school were operating within the confines of the District. Transportation is provided by the District; and a pupil is under no hardship in attending secondary school.

Question No. 1:

Is attendance at a secondary school required for a pupil who has completed the elementary school program and who is under 15 years of age?

Answer:

Yes.

Reason:

The applicable provision of statutory law (quoted above) sets forth three classifications of children required to attend school:

(1) Children between the ages of 7 and 15 years;

(2) Children between the ages of 15 and 17 years who cannot read at sight and write legibly simple sentences in the English language;

(3) Children between the ages of 15 and 16 years who have not completed the grades of the elementary school.

The given facts place the boy in the first classification. As to these classifications, the Legislature has decreed that they "shall attend some public day school during the time such school is in session, and an absence therefrom of one-half day or more shall be deemed a violation of this requirement."

Question #2:

Is such attendance required when a school administrative district has a contract with a neighboring administrative unit for secondary school privileges in the unit's public high school and provides transportation thereto?

Answer:

Yes.

Reason:

School directors of a school administrative district are authorized by Maine Statute to contract for school privileges in a nearby administrative unit.

> "Sec. 105. Pupils in administrative units having no approved secondary schools. Any administrative unit which does not maintain an approved secondary school may authorize its superintending school committee to contract for one to 5 years with and pay the superintending school committee or school directors of any nearby administrative unit, or the trustees of any academy located within such town or in any nearby town or towns, for the schooling of all or part of the pupils within said administrative unit in the studies contemplated by section 98. The school directors of any school administrative district may enter into similar contracts. . . . " *R. S., c. 41.*

And when such a contract exists, the school privileges are offered to the District pupils as though originating in the District. In *Maine Central Institute v. Inhabitants of Palmyra*, 139 Me. 304, our Supreme Judicial Court stated, inter alia, that a high school pupil, residing in a town which contracted for school privileges with an adjoining town, was not entitled to attend another school at his town's expense.

Question No. 3:

Would taking a correspondence course without approval of district directors and Commissioner be the equivalent of school attendance and satisfy the compulsory attendance statute?

Answer:

No.

Reason:

R. S., c. 41, § 92, after stating the requirement of compulsory attendance, provides in part:

> " . . . Such attendance shall not be required if the child obtains equivalent instruction, for a like period of time, in a private school in which the course of study and methods of instruction have been approved by the Commissioner, or in any other manner arranged for by the superintending school committee or the district directors with the approval of the Commissioner. . . . "

If the proposed home instruction has not been "arranged for by the school directors with the approval of the Commissioners," it does not constitute the equivalent of a compulsory school attendance. *79 C. J. S. Schools and School Districts, § 468, n. 10.*

JOHN W. BENOIT
Assistant Attorney General

June 16, 1964

To: Asa A. Gordon, Director, School Administrative Services

Re: School construction aid on additional equipment

Facts:

A town has recently completed the construction of a gymnasium annex, and on November 1 will make application to the State for construction aid pursuant to R. S., c. 41, § 237-H. Too, it now appears that additional shop equipment is necessary due to an increase in school enrollment.

Question:

"Can this expenditure for additional shop equipment be included in the total cost of the present project legally become eligible for school construction aid?"

Answer:

No.

Reason:

School construction aid is expended by the State pursuant to R. S., c. 41, § 237-H. Such moneys are paid for "capital outlay purposes." "Capital outlay purposes" is defined as including "major alteration." (The other elements of the definition of the term ["capital outlay purposes"] are not applicable to the given facts.)

"Major alteration" is defined as follows:

> "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." *R. S., c. 41, § 237-H.*