

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**For The Calendar Years**

**1963 - 1964**

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.*

The courts recognize the distinction between the act of increasing the number of components of an existing group as against the act of establishing a new group. *State ex rel. Knight v. Cave*, 52 P. 200, 20 Mont. 468. An example of the former would be an increase in the inventory of units of shop equipment; and an example of the latter would be the original establishment of an inventory of shop equipment. The former would not constitute the providing of "additional facilities," the latter would.

An authorization of State subsidy pursuant to the given facts would mean that the State would subsidize purchases of property by schools in this State even though said provisions would not amount to the providing of additional school facilities. Our Legislature has not yet authorized such expenditure of State subsidies.

JOHN W. BENOIT  
Assistant Attorney General

June 16, 1964

To: Ruth A. Hazelton, Librarian

Re: Municipal Appropriations to Private Libraries

Facts:

A recently enacted Federal law which provides financial assistance to public libraries has raised a question as to the right of municipalities to appropriate funds to privately owned or controlled libraries.

Question:

May a municipality make a general appropriation to a privately owned or controlled library?

Answer:

Yes. See opinion for conditions.

Opinion:

There can be no question of the power of a municipality to raise and appropriate money for public libraries. This is clearly provided in ch. 42, § 29, and in ch. 90-A, § 12, III, A. A village corporation may do the same. *Ch. 42, § 30*. Also, *ch. 42, § 31*, provides that a municipality may raise and appropriate money to secure for its inhabitants free use of a library located in an adjoining municipality. Two or more towns may unite in establishing and maintaining a library. *Ch. 42, § 32*.

The crux of the matter is an interpretation of ch. 42, § 34. This section reads:

"Any town or city in which there is a library owned or controlled by a corporation or association or by trustees may levy and assess a tax and make appropriation therefrom annually to procure from such library the free use of its books for all the inhabitants of the town or city, under such restrictions and regulations as shall insure the safety and good usage of the books; and such library shall then be considered a free public library within the meaning of this chapter and said town or city shall be entitled to the benefits of the preceding section."