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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

Question No. 2:

Can the brokerage firm licensed to deal only with insurance on property in which the state has an insurable interest allow its commissions to accrue to pay the State's losses uncollectible because of policy deductibles?

Answer:

No.

Opinion:

A brokerage firm establishing a fund from commissions received for fire and liability insurance on state property and from which fund losses would be paid up to the amount of the deductible in the insurance policies is in direct violation of R. S. Me. 1954, c. 60, § 298. The pertinent portion of the section reads as follows:

> "No insurance company transacting fire or liability insurance in this state and no agent or broker transacting fire or liability insurance, either personally or by any other party, shall offer, promise, allow, give, set off or pay, directly or indirectly, as an inducement to fire or liability insurance on any risk in this state, now or hereafter to be written, any rebate of or part of the premium payable on any policy or of the agent's commission thereon; . . . "

The establishment of such a fund would contravene § 298 as it would be a direct offer or promise on the part of a broker transacting fire or liability insurance to rebate at least a part of the agent's commission as an inducement to the writing of fire and liability insurance on risks in this state. Such a payment from the fund would be a violation of the statute.

JEROME S. MATUS
Assistant Attorney General

June 24, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Tuition Charges; Attendance at Portion of Term

Facts:

Your memorandum acknowledges the existence of two opinions directed to your Department by this Office under the dates of January 4, 1950, and April 5, 1957. These opinions deal with the question whether a full-semester tuition charge may be made by the receiving school although the student does not complete a full semester of study. You state that while the reference opinions appear to be closely related, there seems to be a difference of expression on the question.

The amount of State subsidy expended to administrative units is based (in part) on amounts paid or received for tuition.

Question:

May a receiving school charge a full semester's tuition for pupils who enroll late or leave the school before the end of the period?

Answer:

No.

Opinion:

Section 107, Chapter 41, of the 1954 Maine Revised Statutes provides, in part, that "free tuition privilege shall continue only so long as said youth shall maintain a satisfactory standard of deportment and scholarship." The January 4, 1950, opinion gave recognition to such provision of law by stating "that the law does not permit high schools and academies to charge tuition for pupils who are not receiving instruction, any rule by an academy to the contrary notwithstanding, because if the pupil is not in school, as you state, satisfactory standards of scholarship obviously cannot be maintained. Therefore, any charge for tuition after a pupil has left the institution would be illegal." The writer concluded that a full-term tuition charge by the receiving school was illegal when the tuition student attended but four weeks of the term.

The April 5, 1957, opinion made no mention of either the existence of the January 4, 1950, opinion or the provision of law recited in that opinion. Instead, the writer recognized that the particular facts presented to him revealed the existence of a contract between the sending and the receiving schools which provided, in part, that one-half of the term's tuition cost was to be payable to the receiving school in the event that a pupil was in attendance for more than one week of the term but attended less than one-half of the term. That provision in the contract was based upon a school board regulation existing in the receiving town. The writer determined that tuition paid pursuant to the contract was proper.

The January 4, 1950, opinion appears to be supported by at least one jurisdiction. In *Kerr v. Perry School Tp.*, 162 Ind. 310, 70 NE 246 the court said, inter alia, that "if the child transferred is enrolled for only six months in the schools of the creditor corporation, and the term of such school is nine months, then the debtor corporation is required to pay the per capita cost for six months only. Or, in other words, it would be required to pay for what it received, and no more."

In conclusion, we reaffirm the principle expressed in the opinion dated January 4, 1950; and rescind the opinion dated April 5, 1957.

Respectfully yours,

JOHN W. BENOIT
Assistant Attorney General

June 30, 1964

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

Re: Formation of School Administrative Districts by Special Act of Legislature; Discretion of State Board of Education

Facts:

In 1961, the Legislature authorized the formation of a school administrative district comprising the municipalities of Etna and Plymouth. *P. L. 1961, c. 214.* In 1963, the Legislature authorized the formation of a school administrative district comprising the municipalities of Detroit, Etna, Plymouth, Dixmont, and Stetson. *P. L. 1963, c. 170.* The enactment of such special legislation is contemplated in the general law. *R. S., c. 41, § 111-D, V.*