MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

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.*

Question No. 1:

When the Legislature, through a special act, authorizes the formation of a school administrative district, does the State Board of Education have the authority to refuse to permit the formation of such a district?

Answer:

Yes.

Reason:

The reason for the enactment of the legislation is stated in the preamble of each Act as follows:

> "Whereas, the Maine School District Commission cannot approve the formation of this proposed district under the criteria set out in the Revised Statutes of 1954, chapter 41, section 111-E;"

Note that each Act, authorized the Maine School District Commission (now State Board of Education; *R. S., c. 41, § 111-B*) to " . . . proceed pursuant to said chapter 41, section 111-E-1 to 111-U-1. . . . " Thus, the special legislation incorporated the applicable general law by a reference thereto. According to the general law, the State Board of Education may disapprove the applications submitted by local school committees. *R. S., c. 41, § 111-D, V; § 111-F, II.*

Question No. 2:

Does the 1963 Act render the 1961 Act obsolete and useless?

Answer:

No.

Reason:

Neither Act contains a statutory reference of limitation on municipal action. The two Acts are not repugnant, one to the other in their provisions.

Presently, the provisions of both Acts remain effective by reason of the fact that no district has been created pursuant to either measure.

JOHN W. BENOIT
Assistant Attorney General

July 2, 1964

To: C. Wilder Smith, Deputy Commissioner, Labor and Industry

Re: Commissions as Wages

Facts:

A question has arisen concerning the proper interpretation of the word "wages" as used in Revised Statutes 1954, chapter 30, section 50. Some employees are paid on a "commission" basis as opposed to an hourly, daily, weekly or annual salary basis. The question concerns the person, usually a salesman, who receives "commissions" on his sales.

Question:

Does the word "wages" include "commissions"?

Answer:

See opinion for answer.