STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

October 13, 1964

To: Paul A. MacDonald, Secretary of State

Re: Eligibility for Dealer Plates of Farm Machinery or Heavy Equipment Dealers.

Facts:

Certain dealers in farm machinery or heavy equipment buy and sell self-propelled vehicles as part of their businesses.

Question:

May farm machinery dealers or heavy equipment dealers who buy and sell self-propelled vehicles as part of their businesses be entitled to dealer registration plates for use on the self-propelled vehicles?

Answer:

See opinion.

Opinion:

R. S. Me. 1954, c. 22, § 26, as amended sets forth the criteria which an applicant must meet to obtain dealer registration plates. There is no reference in § 26 to the type of motor vehicle which must be bought and sold by the applicant. A motor vehicle is defined by R. S. Me. 1954, c. 22, § 1, as amended, as follows:

> "Motor vehicle shall mean any self-propelled vehicle not operated exclusively on tracks, including motorcycles."

The pertinent part of R. S. Me. 1954, c. 22, § 26 setting forth the criteria for obtaining dealer plates is as follows:

> " . . . The board, if satisfied that the applicant maintains a permanent place of business in the State where said applicant will be engaged in the business of buying and selling of motor vehicles, and is satisfied with the other facts stated in the application, and if satisfied that the applicant meets the minimum standards herein set forth, shall order the Secretary of State to issue a certificate of registration."

It therefore follows that an applicant is entitled to dealer plates regardless of the fact that he deals in farm machinery or heavy equipment provided he maintains a permanent place of business for the buying and selling of self-propelled vehicles that fall within the definition of a "motor vehicle," as well as satisfying the dealer board as to the other facts stated in his application and fully meeting the minimum standards set forth in R. S. Me. 1954, c. 22, § 26, as amended.

It should be noted that holders of motor vehicle dealer registration plates are subject to the limitations of the use of said plates established by R. S. Me. 1954, c. 22 § 29.

JEROME S. MATUS
Assistant Attorney General

October 22, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: "Shared Time" Program

Facts:

Appropriate school officials of an administrative unit wherein a public high school is maintained has presented a proposed "shared time" program to the State Department of Education for approval. Under the plan, Sanford High School would provide instruction in its classrooms for parochial school students residing in Sanford who normally attend St. Ignatius High School. The proposed plan encompasses two regular courses taught at Sanford High School, i. e., calculus and pre-nursing science.

Questions:

1. Is it legal for a school committee of an administrative unit to admit and provide instruction in calculus and pre-nursing science for resident students who are regularly enrolled in a private school which maintains a course of study and methods of instruction which have been approved by the Commissioner of Education?
2. Whether general purpose subsidy may be legally paid to an administrative unit participating in a "shared time" program as set forth in the given facts, so that the administrative unit realizes subsidy concerning the expenditures incurred relative to said program?
3. Whether construction subsidy can be legally paid to an administrative unit participating in a "shared time" program?

Answer:

The answers are given in the Reason.

Reason:

The Constitution of the State of Maine contains the following mandate upon the subject of education:

"ARTICLE VIII

"Literature

> "A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people; to promote this important object, the legislature are authorized, and it shall be their duty to require, the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools; and it shall further be their duty to encourage and suitably endow, from time to time, as the circumstances of the people may authorize, all academies, colleges and seminaries of learning within the state: *provided*, that no donation, grant or endowment shall at any time be made by the legislature to any literary institution now established, or which may hereafter be established, unless at the time of making such endowment, the legislature of the state shall have the right to grant any further powers to alter, limit or restrain any of the powers vested in, any such literary institution, as shall be judged necessary to promote the best interests thereof." *Constitution of the State of Maine.*

The Legislature, in its performance of that duty imposed by Constitutional decree, has enacted plural laws in the field of education. So it is, inter alia, that every administrative unit is required to raise and expend

monies for the support of their public schools. *R. S., c. 41, § 28*; and that all administrative units are required to provide school books, apparatus, and appliances for the use of pupils in their public schools. *R. S., c. 41, ¶ 34.* An examination of the State of Maine Laws relating to education reveals that the Legislature has not enacted legislation authorizing either the Commissioner of Education or the State Board of Education to approve "shared time" programs between school officials in administrative units and school officials of private schools.

Presently, limited attendance is authorized between the public schools in the area of "occupational courses."

> " . . . . Any youth whose parent or guardian maintains a home for his family in an administrative unit that maintains, or contracts for school privileges in, an approved secondary school which offers less than 2 approved occupational courses of study, and who has met the qualifications for admission to the high school in his town, may elect to attend some other approved secondary school to which he may gain admission for the purpose of studying an occupational course not offered or contracted for by the administrative unit of his legal residence." *R. S., c. 41, § 107.*

Surely, if legislation is necessary to authorize a limited attendance program between public schools, legislation is certainly required to authorize a limited attendance program between a public school and a private school.

Our Supreme Judicial Court, in *Squires, et al. v. City of Augusta*, 155 Me. 151, at page 159, stated a principle of law which seems both applicable and appropriate to the present matter.

> "From our study of the laws pertaining to education, we are convinced that the Legislature which enacted the various provisions intended that no municipality should regulate by ordinance or order any subjects which would affect or influence general education unless permitted to do so by an express delegation of power. To determine otherwise would be to disregard the clear intent of the Legislature and invite an interference on the part of any municipality within the State with the State's responsibility and constitutional duty to exert its 'full power' over the subject matter of schools and of education . . . "

Continuing, the Court in *Squires v. City of Augusta*, supra, held that "the State educational policy cannot and must not be interfered with by any subordinate governing body."

In answer to the first question, the State of Maine Laws relating to education do not authorize either the Commissioner of Education or the State Board of Education to approve the proposed "shared time" program; and, that being so, general purpose subsidy may not legally be paid to an administrative unit concerning the expenditures incurred by said unit relative to such program. Because the given facts do not indicate that construction subsidy is involved, the third question is moot.

In drafting this opinion, we are mindful of R. S., c. 41, § 37 wherein an administrative unit is authorized to "raise and appropriate money for the support of evening schools, day schools, classes and educational activities" for persons over 16 years of age "who are not in attendance at another

public school." Because section 37 permits an administrative unit to present a program which is supplementary to regular public school programs, it would be error to extend the import of the reference section.

JOHN W. BENOIT
Assistant Attorney General

November 5, 1964

To: George F. Mahoney, Commissioner of Insurance

Re: Division of Commissions Among Licensed Maine Insurance Agencies

Facts:

Many insurance coverages formerly supplied through the purchase of separate policies can now be obtained through the purchase of a so-called "package policy." There are insureds who purchased separate policies from different licensed Maine agencies but now find it to their advantage to purchase a "package policy" from one agency. Some of the insureds still desire to favor agencies from whom they had previously purchased separate policies. These insureds may direct the agency that writes the package policy to divide the commission on the package policy among such other agencies as the insured may designate. In many instances no actual service may be performed for the insured by an agency other than the policy writing agency.

Question:

Without violating Maine Statutes or acts of the United States Congress may commissions be divided among licensed Maine insurance agencies designated by an insured in those instances when such agencies do not issue policies or perform any other service for the insured?

Answer:

Yes.

Opinion:

The division of commissions among licensed Maine agencies without the issuance of a policy or performance of service by other than the policy writing agency is not violative of either federal or state law. In arriving at this conclusion, the first point to be decided is whether or not a division of commissions constitutes a doing of business in interstate commerce, and therefore could be subject to federal regulation. Although not stated in the given facts we are assuming that the commissions to be divided are paid by a foreign insurance company to a resident licensed Maine agency on the sale of a so-called "package policy" issued by the foreign insurance company.

In 1868, the United States Supreme Court held that insurance was not commerce and that insurance contracts were not interstate transactions even though the parties to the contracts were domiciled in different states in *Paul v. Virginia*, 75 U. S. (8 Wall) 168. This view was maintained by the United States Supreme Court until 1944 when in the Landmark Case of *U. S. v. South-Eastern Underwriters Association*, 322 U. S. 533, the Court found the South-Eastern Underwriters Association and its membership of nearly two hundred private stock fire insurance companies and twenty-seven individuals in violation of the Sherman Anti-Trust Act and held inter alia that