

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

**ATTORNEY GENERAL**

for the calender years

1965 - 1966

in the beneficiaries, only that they are to be public and for the benefit of the town.” *State v. Mullen*, supra, at page 335.

Thus, if the Town of Millinocket acquired its public school lot by reason of the general law of the State of Maine, the fee has vested in the Town and the Legislature, by an enactment of general law, may authorize such Town to use the fund for school purposes. Such legislation should be so drawn that the vote of the townspeople occurs after the approval of the trustees (municipal officials.)

If the Town of Millinocket acquired the public lot pursuant to the act relating to the separation of the District of Maine from Massachusetts, Public Laws of Maine, 1821, Volume 1, p. 46, the Legislature may, through an enactment of general law, authorize the Town to make use of the “corpus” for school purpose. We predicate our opinion on the existence of Chapter 492 of the Laws of Maine, 1831, wherein the Legislature of this State created an Act to modify the terms and conditions of the Act of Separation; and in said Act decreed that the terms and conditions of the original Act “are hereby, so modified, or annulled, that the trustees of any ministerial or school fund incorporated by the Legislature of Massachusetts, in any town within this State, shall have, hold and enjoy their powers and privileges, subject to be altered, restrained, extended or *annulled* by the Legislature of Maine with the consent of such trustees and of the town for whose benefit such fund was established.” (Emphasis supplied) The reference Act specified that it “shall take effect and be in force, provided, the Legislature of the Commonwealth of Massachusetts shall give its consent thereto.” The reference consent was given by the Commonwealth of Massachusetts through its enactment of a legislative mandate of approval signed by the Governor June 20, 1831. *Laws of Massachusetts*, 1831, c. 47.

Very truly yours,  
JOHN W. BENOIT  
Assistant Attorney General

March 2, 1965  
Education

Kermit S. Nickerson, Deputy Commissioner

Transportation of pupils; Review of Opinion Dated December 14, 1964.

*Supplemental Statement Re December 14, 1964 Opinion*

In a formal opinion dated December 14, 1964, this office declared that a superintending school committee of town A, which had contracted with the superintending school committee of town B so that the former town was educating the pupils of the latter town, could also contract with town B concerning the conveyance of town B’s public school pupils to town A’s schools. In the reference opinion we declined to render a formal opinion regarding the further use which was made of town A’s school buses, i.e., the transportation of certain of town B’s private school children to a private school in town A.

You have requested that we review the reference opinion. You indicate that you are concerned with the fact that town A’s buses are going beyond “the town limits to provide conveyance for hire to another municipality.” We know of no statutory provision confining the use of school buses to the town limits. Under the given facts, town B does not possess the necessary buses required to transport its students to town A; and has contracted with town A for the plural purposes of acquiring both an education for its youngsters and for the conveyance of these children to the place where the classes are held. In effect, town B’s superintending school committee is providing

conveyance through the contract procedure. You also indicate concern relative to the fact that the use of town A's buses beyond its town limits might in some way conflict with public transportation regulations. The given facts do not indicate that town A's use of its buses constitutes a mode of public transportation.

You further express concern regarding town A's conveyance of town B's private school students to a private school in town A. You indicate that since town A's use of its buses involves a dual use, i.e., the conveyance of public school students and the conveyance of private school students, that, therefore, the expenditures are commingled, and the State cannot legally pay any subsidy for such private school transportation. The situation is no different than the plural instances of dual conveyance of both private and public school students in the City of Auburn. In such cases the State Board of Education has adopted a formula which, when applied, results in a state subsidy being paid on the cost of the conveying public school students only.

In conclusion, we are all mindful of the situations wherein towns make use of their school buses for the purpose of conveying members of the basketball team and members of the student body to basketball tournaments located outside the limits of the town; and of the situations where such teams and students are carried to other states on such buses for the purpose of taking part in an interstate tournament. Too, we are mindful of the situations where school buses are used to convey the members of the school band for concerts held outside the limits of the particular town. Surely, a town has as much right to use its buses to convey students residing in an adjacent municipality when the transporting town also holds a contract with such adjacent municipality regarding the education of these reference pupils.

JOHN W. BENOIT  
Assistant Attorney General

March 9, 1965  
Education

Kermit S. Nickerson, Deputy Commissioner

Transportation of School Children; Review of Opinion Dated December 14, 1964.

We acknowledge receipt of your inter-departmental memorandum dated March 5, 1965, wherein you indicate, a second time, that our December 14, 1964, opinion has not been received with favor by the Department of Education. (The first such indication came here on January 29, 1965.)

In your latest memorandum, you state that you shall draw the following conclusions concerning the December 14, 1964, opinion:

1. "A town operating a municipal bus route may engage in the business of transporting pupils residing in other towns for hire."
2. "I gather from the opinion that use of a school bus does not conflict with public transportation laws or franchises, even though this may be done for hire, on a contractual arrangement and for non-residents of the owning and operating town."

In the December 14 opinion, the facts reveal that the sending town contracted with the receiving town for both education and transportation. Our opinion should be read in light of the given facts. We have not yet stated that a municipality may operate its school buses for the purpose of transporting pupils residing in other towns for hire. Whether or not it may so operate is a matter of no concern to the State Department of Education.

You indicate that you are concerned by the "fact Town A is conveying students of