

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

**ATTORNEY GENERAL**

for the calender years

1965 - 1966

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

Town B to a parochial school for fees paid by the parents \* \* \*.” In our December 14 opinion, we stated that this was an area where the State should have no concern.

Your memorandum asks in conclusion: “What is the answer which may be given a citizen and a taxpayer in Town A when he says his tax money is being used to convey pupils for Town B and other non-resident pupils to a private school?” Of course, you are not required in law to answer such a question; and to do so would usurp the function of town counsel and the courts.

In conclusion, it is somewhat unrealistic to say that a town may utilize its school buses in order to transport members of the school body to a point outside the town limits (even to a point outside the state) in order that certain members of the student body take part in an athletic event; and, at the same time, saying that these same school buses cannot be utilized by the town for the purpose of performing the terms of a contract which call for such town to both educate and transport the students residing in the adjacent town. If a taxpayer feels himself aggrieved by such circumstances, he should not receive legal advice from the Department of Education.

JOHN W. BENOIT  
Assistant Attorney General

March 31, 1965  
Water Improvement Commission

R. S. Macdonald, Chief Engineer

Licensing of the Vahlsing Plant (sugar beet factory)

*FACTS:*

A new sugar beet processing plant is to be constructed on Prestile Stream. There are two possibilities; (1) the factory may connect into and discharge through the present pipe of a potato processing plant or, (2) it may discharge through its own pipe some 300 feet from the point of discharge of the potato processing plant.

*QUESTION:*

Does the sugar beet plant need a license from the Water Improvement Commission in either instance?

*ANSWER:*

Yes.

*REASON:*

The licensing of industries to pollute waters is covered by 38 M.R.S.A., sec. 413.

“No person, firm, corporation or municipality or agency thereof shall discharge into any stream, river, pond, lake or other body of water or watercourse or any tidal waters, whether classified or unclassified, any waste, refuse or effluent from any manufacturing, processing or industrial plant or establishment or any sewage *so as to constitute a new source of pollution* to said waters without first obtaining a license therefor from the commission.” (Emphasis supplied)