

MAINE STATE LEGISLATURE

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No ✓
June 10, 1965

Kernit S. Nickerson, Deputy Commissioner
John W. Benoit, Assistant
Truancy.

Education
Attorney General

FACTS:

The Superintendent of Schools of School Administrative District #10 (Allagash) has informed your Department that a chronic truancy problem presently exists in said district; and that the problem has existed in the area for some year. Specifically (during past school year) 50 per cent of the elementary school pupils of compulsory school age have been absent five days or more; and many have been absent over 20 days. The situation is worse at the secondary school level. You inform us that: "All of the truant officer's children are truant, and the majority, if not all, of the school directors' children are truant." The Superintendent of Schools further informed your Department that in view of these facts, he does not expect any cooperation from the local officials. Because of this, it is deemed necessary that the problem be solved by outside authority. The Superintendent of Schools further stated that he had discussed the problem with District Court Judge Anderson who assured him complete support and who suggested that the matter be brought to the attention of the Attorney General's Office.

QUESTION:

What legal remedies are available to the Department of Education concerning this problem?

ANSWER:

See REASON below.

REASON:

We direct your attention to 20 M.R.S.A. § 913 wherein the Legislature has declared that any attendance officer who neglects to perform the duty required of him shall be punished by a fine of not less than \$10 nor more than \$50. Thus, there is an existing provision of the Maine Statutes prescribing punishment when an attendance officer neglects to perform the functions of his office.

According to the given facts, the local school officials have no intention of requiring their appointed attendance officer to perform his duty. In this case, the reference provision of the Maine Statutes provides that "any administrative unit failing through its superintending school committee or school directors to meet said provisions shall be liable to §854." This latter section (§854) authorizes the Governor and Executive Council to direct the Treasurer of the State to withhold certain of the State school funds from the administrative unit until the administrative unit "has complied in all ways with the law prescribing the duties of administrative units in relation to public schools."

There is case law to the effect that a truant or attendance officer is a public officer, where his position is created by statute. Burris v. St. Clair County Board of Education District #188, 221 Ill. App. 397; Featherhill v. State (Ind.) 72 N.E. 181. It is also stated that the duties of a truant officer are fixed by statute, not by contract. Burris v. St. Clair County Board of Education District #188, supra. 20 M.R.S.A. §913 sets forth said duties.

It is to be noted that the relationship between the school board which appoints an attendance officer and such officer, where his duties are prescribed by statute, is not that of principal and agent or master and servant. Reynolds v. Little Falls Union Free School District Board of Education, 32 N.Y.S. 75, 33 App. Div. 88. Because, as we have stated earlier, the attendance officer is a public officer, a complaint brought against him in District Court (municipal court) might be brought by any complainant, and not by the school officials only.

When it comes to the attention of your Department that a particular administrative unit is passive regarding the compulsory attendance provisions of the Maine Statutes, any applicable corrective procedure of the Maine Statutes should be utilized to right the wrong.

John W. Benoit
Assistant Attorney General

JWB/eh