

# MAINE STATE LEGISLATURE

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August 5, 1965

James L. Brown, Supervisor

Education

John W. Benoit, Assistant

Attorney General

Responsibility of the State for Board and Tuition; Unorganized Territory.

**FACTS:**

Mr. Skillin, a parent of two minor children, owns a house in Guilford. He also owns and operates sporting camps in Township A, Range 11 (unorganized territory).

The Department of Education has taken the position that when school is in session and when parents of school children reside in unorganized territory, the State is responsible for necessary tuition and board of the subject parents' children. Applying this position, board payments were forwarded to a Mrs. Betty Welts, who, it was thought, was boarding the Skillin children. Tuition has not yet been paid to the Town of Guilford.

Facts have now come to the attention of the Department of Education that Mrs. Welts maintained the Skillin home in Guilford and did not board the Skillin children in her own residence. The State's check covering payment for board for 13 weeks in the amount of \$208 was drawn in the name of Mrs. Welts and was delivered to her. Upon receipt of the check, Mrs. Welts endorsed the same and turned the check over to Mr. Skillin. Thereupon, Mr. Skillin endorsed the check and received the \$208.

The application for board subsidy executed by Mr. Skillin states, in his own handwriting, that: (1) He is self-employed; (2) His permanent residence is Guilford, Maine; (3) He maintains a home for his family in Guilford, Maine; and (4) His children will be boarded with Mrs. Elizabeth Welts in Guilford, Maine. The application certifies that the statements in the instrument are true and correct.

The Department of Education requested of Mr. Skillin why his signature appeared on the board check following that of Mrs. Welts; and Mr. Skillin replied that permission to endorse the check was given him by the Guilford School Board and that he endorsed the check for the reason that he had paid the expenses of maintaining his home "during the time involved."

QUESTIONS:

1. Whether the father maintained a home for his family in Guilford during the reference portion of the school year?
2. Under the given facts, is the State responsible for tuition?
3. Whether the State may recover the monies erroneously paid for board?
4. If monies can be reclaimed, what procedures should be utilized by the Department in this respect?

ANSWERS:

See REASON below.

REASON:

Mr. Skillin maintained a home for his family in Guilford for the reference period. We predicate this position upon the very good fact that Mr. Skillin, in the application for board subsidy, states, among other things, that he maintains a home for his family in Guilford, Maine. Furthermore, Mr. Skillin's reply to your letter of May 19, 1965, states that he paid all expenses regarding the maintenance of his home in Guilford while Mrs. Welts attended to the children. The given facts do not support a position that Mr. Skillin maintained a home for his family in Township A, Range 11, so as to obligate the State to pay board and tuition involving the education of Mr. Skillin's children. In view of the conclusion reached above, payment of board to Mrs. Welts, followed by surrender of the check to Mr. Skillin (by Mrs. Welts) amounted to the State's subsidizing the maintenance of the Skillin home for the 13 week period, contrary to the laws relating to public schools.

It is not necessary to recite the plural applicable provisions of the laws relating to the education of children whose parents reside in unorganized territories. It is sufficient to recite only that the governing principles are set forth in 20 M.R.S.A. § 1451, et seq. The specific section relating to tuition and board is § 1454. There, it is stated (inter alia) that a youth may attend a secondary school at expense to the State (tuition and board) when his parent or legal guardian

maintains a home for the family in unorganized territory. Again, since the given facts clearly reveal that Mr. Skillin was not maintaining a home for his family in unorganized territory, tuition and board could not be legally required of the State.

Since the facts reveal that the State has not yet paid tuition to the Town of Guilford re the Skillin children, and since your memorandum requests whether such expenditure should be made, it becomes appropriate to advise you that the referenced tuition should not be paid to Guilford since the Skillin children are entitled to attend the town's public school sans such payment. 20 M.R.S.A. § 859.

Because the State's payment of board to Mrs. Welts was not authorized by the Maine laws relating to public schools, the monies should be recovered. We would suggest that the Department make demand upon Mr. Skillin for the amount of board payment (\$200) since his endorsement appears on the check, and since he ultimately acquired the monies. If demands for payment are fruitless, and if the Department desires to recover the monies by court action, please so advise.

(We are retaining the photostatic copies of the several letters and of the board check.)

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John W. Benoit  
Assistant Attorney General

JWB/eh