

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1965 - 1966

ANSWER:

No.

REASONS:

The previously cited statute reads:

“When there is dissatisfaction with a postaudit made by a public accountant as shown by a petition signed by at least 10% of the voters of a municipality or village corporation, but in no case more than 1,000, and filed with the State Auditor, he shall order a new postaudit to be made by his department, the expense of which shall be paid by the municipality or village corporation.”

The wording of the statute contemplates three stages in this process. (1) A dissatisfaction with a postaudit performed by a public accountant (2) the signing of a petition requesting a postaudit by the State Auditor and (3) the filing of the completed petition with the State Auditor.

All three steps must be completed before the State Auditor can act. The process might proceed through the first two steps, i.e., dissatisfaction and the signing of a petition. At this stage nothing has been accomplished. Signers may withdraw, the sponsors may hold up the filing of the petition, but once the signed petition is filed with the State Auditor, he must act. He is given no alternative but “he *shall* order a new postaudit to be made by his department.” (Emphasis supplied).

The process has been completed by the filing of the petition with the State Auditor. He must now make the requested postaudit. There is no provision in the statutes for the withdrawal of the petition or of individual names signed on the petition. The Legislature can make provision for withdrawal, but until it does no withdrawal of names may be effected after the petition has been filed.

GEORGE C. WEST
Deputy Attorney General

October 8, 1965
Education

Hayden L. V. Anderson, Executive Dir.
Div. of Professional Services

Requirement that Gorham State College Students Purchase Health and Accident Insurance

FACTS:

Gorham State College requires that each student purchase health and accident insurance, at a cost of \$18 per year. The reference college catalogue contains the following proviso regarding insurance:

“Health and accident insurance, which is required of all students at a nominal fee, covers a portion of hospitalization, surgery, medication, and care by a physician.”

This fall, a parent of one of the Gorham State College students has objected to the payment of the insurance fee on the grounds that the charge is illegal.

Your memorandum informs us that the University of Maine presents its students with such insurance on an optional basis. At the University, the insurance is routinely charged to every full-time student; but if the student does not desire insurance protection, he may have the charge removed from his bill by notifying the treasurer's office at the time of registration.

QUESTION:

May Gorham State College legally compel its students to purchase health and accident insurance?

ANSWER:

No.

REASON:

The laws relating to public schools provide, inter alia, that the State Board of Education shall charge \$200 for tuition to non-residents of the State and shall charge \$100 for tuition to residents of the State. *20 M.R.S.A. § 2304*. An examination of the reference law fails to reveal authority for charging students a sum for health and accident insurance.

A leading text in the field of law contains the following provision which appears to be of significance:

“ * * * In the absence of constitutional prohibition or limitation, the legislature may provide that a state university shall charge each student prescribed tuition and other fees; and in the absence of legislative or constitutional prohibition, a state college or university may charge all students for tuition and may exact from them other fees *in connection with the running of the institution.*” *14 C.J.S. Colleges and Universities, § 27*. (Emphasis supplied.)

A charge for health and accident insurance does not appear to be “in connection with the running of the institution.”

“The express power to manage and control the business and finances of the institutions carries with it the implied power to do all things necessary and proper to the exercise of the general powers, which would include the exaction of fees, not prohibited, if fees are necessary to the conduct of the business of the institutions.” *State v. State Board of Education*, 97 Mont. 121, 33 P. 2d 516, 522.

Suppose that a ‘hypothetical parent’ has already purchased health and accident insurance coverage for his family. In such an instance, is it not unfair to require the parent to purchase additional health and accident coverage merely because his son or daughter attends the reference State College? Too, the coverage provided by one of the policies might be adversely effected by the existence of the other policy, to the detriment of the parent.

JOHN W. BENOIT
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