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March 13, 1968

Allen Pease, Administrative Assistant

Executive

John W. Benoit, Assistant

Attorney General

Conflict of Interest; Custodian at High School Elected as
Selectman of Town.

We have your interdepartmental memorandum dated March 8, 1968 asking us to explain the difference in the reasoning of our recent opinion regarding the potential appointment of Dr. Lincoln Fish to the State Board of Education, and an alleged recent opinion by this office stating that no conflict of interest would result from the election of a high school custodian to the office of selectman in the Town of Windham.

First, this office has not issued an opinion regarding the possible election of the reference school custodian to the office of selectman in Windham. We are not unaware of a particular newspaper item stating that the selectmen in Windham have been given verbal assurance by this office that there would be no conflict of interest in the subject matter. I have had telephone conversations with Superintendent Wright and with Selectman Clyde S. Esty, as well as with Kermit S. Nickerson, Deputy Commissioner of Education, and none of these gentlemen were ever in contact with this office relative to the issuance of an opinion by the Attorney General in this matter.

Notwithstanding that this office has issued no opinion in this matter, we respectfully offer the following comment for the purpose of exhibiting the distinction between the conclusion of the opinion concerning Dr. Lincoln Fish, and the situation where it is said that a conflict of interest does not accrue from the fact that a person is elected selectman at a time when that person holds the position as custodian of the local high school. The reference newspaper article recites that the attorney for the Maine Municipal Association, the State Department of Education, and the Maine School Boards Association have all determined that the reference situation does not result in a conflict of interest.

By statute, superintending school committees and school directors are charged with the management of the schools; employment of school personnel; and with the custody and care of all school property. 20 M.R.S.A. § 473, 1. According to the provisions of 20 MRSA § 853, money which is appropriated for public schools is to be paid from the administrative unit's treasury only upon written order of the municipal officers. However, the order of the municipal officers

does not operate until a properly avouched bill of items approved by a majority of the members of the local school committee is presented to the municipal officers for payment.

Simply stated, selectmen of towns are not charged with the management, custody, and care of schools. That is the province of the local school officials as has been noted earlier herein. Conversely, the State Board of Education, according to existing provisions of the Maine Statutes, is charged with the direct supervision of the State Colleges, including the employing of teachers, specified in 20 M.R.S.A. § 2301. See 20 M.R.S.A. § 2305.

I trust that this memorandum sufficiently answers your request that we explain the difference in reasoning between our opinion concerning Dr. Lincoln Fish and the plural expressions in support of the principle that a high school custodian may hold the elected office of selectman sans a conflict of interest accruing.

JWB/eh