

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

June 7, 1968
Education

Kermit S. Nickerson, Deputy Commissioner

School Residence of State Wards.

SYLLABUS:

The placement of state wards in a private academy by the Department of Health and Welfare does not thereby constitute the wards as residents of the school administrative district in which the private academy is located; and under such placement, the district is not liable for tuition.

FACTS:

The Department of Health and Welfare, Division of Child Welfare, due to the lack of foster homes, has placed a few wards at two of the private academies in this State. These wards live in dormitories and are subject to school regulations in the same manner as all other enrollees at the academies. The academy officers are not designated as foster parents although the wards are in their care and custody while school is in session. The local unit has no jurisdiction over the admittance of such students to the school.

QUESTIONS:

1. Given the above factual situation, does the presence at the academy of state wards during school sessions constitute school residence in the administrative unit wherein the academy is located, thus making the private school in effect a foster home?
2. Is the (school) unit legally responsible for the payment of tuition of these wards?

ANSWERS:

1. No.
2. No.

REASON:

The answers to the above-designated questions are largely derivative of the language of 20 M.R.S.A. §1293 which reads as follows:

“Tuition for state wards

“Administrative units which do not maintain or support a secondary school shall be reimbursed by the Department of Health and Welfare for the amounts expended by them for secondary tuition of state wards residing in such administrative units.” (Emphasis supplied)

One must ask the simple question, what expenditure has been incurred by a local school unit by the direct placement of state wards in a private academy, for which reimbursement should be made? When it is impossible to place wards in foster homes and the Department of Health and Welfare directly places said wards in a private school, tuition payments should be made directly to the school by the Department. It makes little sense to conclude that by the placement of a ward in a private school by the State, residency within the school district in which the private institution is located is

established by the student ward for which the district may pay tuition in the first instance, and then seek reimbursement from the State. Furthermore, mere attendance at any school, whether public or private, does not per se establish residence within the geographic area in which said school is located.

PHILLIP M. KILMISTER
Assistant Attorney General

June 7, 1968
Treasury

Michael A. Napolitano, State Treasurer

Allotments, availability of Funds

SYLLABUS:

Actual funds need not be available for expenditure prior to the approval of departmental allotments.

FACTS:

In your memorandum of April 24, 1968 submitted to this office you state the following factual resume:

“For budgeting, allotting and accounting purposes the state fiscal year is divided into four quarters. A department is required to submit to the State Budget Officer a work program projecting its needs on a quarterly basis. After review by the State Budget Officer and upon approval by the Governor and Council, the department is notified of the amounts of money allotted to its work program by quarters for the ensuing year.”

QUESTION:

Do the various Appropriation Acts or Revised Statutes of Maine require that actual funds must be available before allotments can be approved?

ANSWER:

No.

OPINION:

The entire state budget system is based upon estimated receipts and expenditures and the balancing of one against the other for definite periods of time. State income derivative from taxation and other major income sources can be estimated with a certain degree of accuracy, however the exact time when revenue due the state will be received is not predictable.

The approval of state departmental allotments is based upon estimated income accruable to the state and not the amount of funds in the state treasury actually available for expenditure at any one time. To base approval of anticipated state departmental expenses upon the amount of funds actually held in the state treasury on a