

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

“appropriation” made by the Legislature may be transferred “to any other appropriation.” In short, the Legislature has authorized the Governor and Council to transfer within a Department funds from one appropriation to another appropriation.

There is no provision in the statutes whereby the Governor and Council are authorized to transfer funds from an “appropriation” to a “bond issue account.” A “bond issue account” is not an “appropriation.” A bond issue is proposed by the Legislature and approved by the people. An “appropriation” is credits advanced to a department or agency out of funds under the control of the Legislature and by legislative act which does not need the approval of the people.

The two accounts are of a different nature and the Governor and Council have not been given authority to transfer funds from one to another. It, therefore, follows that the proposed transfer is not within the jurisdiction of the Governor and Council.

Very truly yours,

GEORGE C. WEST
Deputy Attorney General

November 19, 1969

Dr. Keith L. Crockett
Assistant Commissioner
Department of Education
State Office Building
Augusta, Maine

Dear Dr. Crockett:

SYLLABUS:

A municipal corporation or school administrative district is required to obtain a license for its school buses from the Public Utilities Commission before it operates them for the purpose of transporting passengers other than students to and from school and students and chaperones to and from school activities.

FACTS:

A municipal school department or a school administrative district owns and operates certain vehicles which are primarily utilized to transport school children to and from schools and to and from school activities. On occasion, however, these vehicles are utilized for other purposes, such as the transportation of:

- a. Children from the community (district) to a city in which such activities as the Shrine Circus are being performed. The children may pay their bus fare individually or it may be paid by some organization which is sponsoring the trip;
- b. People over 75 years of age from the community (district) to a second community where an activity such as the Three-Quarter Century Club annual meeting is being held, the fare being paid either by the individual passengers or the organization sponsoring the trip;
- c. Children from the community (district) to a nearby community where the Red Cross is conducting a swimming instruction program, the transportation fare to be paid by the children individually or by some sponsoring organization.

QUESTION:

May the municipality or the school administrative district which owns and operates school buses utilize them in activities such as those described in Facts without first obtaining a license to do so from the Public Utilities Commission?

ANSWER:

According to 35 M.R.S.A. § 1643,

“No person shall operate a motor vehicle for the transportation of passengers in special or charter service as defined in Section 1642 on any street or highway in any city or town of this state unless there is in force with respect to such person a license issued by the (Public Utilities) Commission authorizing such operations.”

Section 1642, as amended by P. L. 1969, c. 16, defines the term “special or charter carrier of passengers by motor vehicle” as,

“. . . every person who or which engages in the transportation by motor vehicle of passengers for hire other than transportation referred to in Section 1501 (the common carrier) for which a certificate is required under Section 1505.”

The definition continues, however, by stating the term shall not include:

“1. School bus. The operation of a school bus as defined in Title 29, Section 2011, when such school bus is engaged in transportation of children to and from school and to and from any school-sponsored activity when such school-sponsored activity is performed as part of a continuing contract to transport children to and from school sessions. Such transportation may include a reasonable number of chaperones formally designated as such by school authorities.”

(Amended by P. L. 1969, C. 16.)

It is recognized that 29 M.R.S.A. § 2011 defines the phrase “school bus” in somewhat broader terms than the exemption set forth in 35 M.R.S.A. § 1642 (1).

“The term ‘school bus’ includes every motor vehicle with a carrying capacity of 10 or more passengers, owned by a public or governmental agency or private school and operated for the transportation of children to or from school, or to or from any school activities at a school regularly attended by such children, or privately owned and operated for compensation for the transportation of children to or from school or to or from any school activities at a school regularly attended by such children, or to and from any municipally sponsored, nonschool activity within the State for which use of a bus has been approved by the superintending school committee, community school committees or board of directors; school as used in this sentence shall mean either a private or public school. Buses operated by a motor carrier having a certificate of public convenience and necessity issued by the Public Utilities Commission under Title 35, sections 1501 to 1518, which comply with the requirements of the commission shall not be regarded as ‘school buses’.”

The Legislature was clearly aware of the breadth of the school bus definition of Title 29, Section 2011, when it enacted in 1961 and modified in 1969 the exemption from Public Utilities Commission regulation applicable to school buses. In fact, the definition of Title 29 was specifically referred to in the exemption of Title 35. While a municipal corporation or SAD may operate a school bus within the meaning of 29 M.R.S.A. § 2011, it may not operate beyond the limitations of 35 M.R.S.A. § 1642 (1) without first

having obtained a license from the Public Utilities Commission.

It is noted that the statutory language of the Public Utilities Commission regulatory law speaks in terms of a "person," as opposed to a municipal corporation or school administrative district, obtaining a license to operate in special or charter service. That the specific statutory language does not state reference to corporations, municipal corporations or administrative school districts, does not alter this opinion.

The Rules of Construction of the Maine Statutes, 1 M.R.S.A. § 72 (15), affirmatively states that the term "person" may include a body corporate. The word may be properly construed to include a municipal corporation as well as a private corporation.

Therefore, a municipal corporation or school administrative district is required to obtain a license from the Public Utilities Commission before it operates a school bus it owns for the purpose of transporting passengers other than students to and from school, and students and chaperones to and from school activities.

Very truly yours,

HORACE S. LIBBY
General Counsel
Public Utilities Commission

GEORGE C. WEST
Deputy Attorney General
Dept. of Attorney General

December 5, 1969
Probation and Parole

G. Raymond Nichols, Director

Affect of P.L. 1969, Chapter 460, AN ACT To Provide for the Expunging of Certain Records of Arrest on State Division of Probation and Parole

SYLLABUS:

The Division of Probation and Parole is not a law enforcement agency subject to expunging of arrest records provisions under 16 M.R.S.A. § 600, P.L. 1969, c. 460, AN ACT To Provide for the Expunging of Certain Records of Arrest.

FACTS:

Probation and Parole officers of the Division of Probation and Parole are involved in the conduct of investigations requested by the Courts in criminal cases. Reports prepared in connection with such investigations contain information relative to the arrest of individuals under investigation.

QUESTION:

Are records of the Probation and Parole Division subject to P.L. 1969, c. 460, AN ACT to provide for the Expunging of Certain Records of Arrest?