

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

REASONS:

The reference teacher is employed by a city in the State; and the city is considered to be a political subdivision of the State. In *Burkett v. Youngs, et al.*, 135 Me. 459, 199 A. 619, the City of Bangor was declared a "territorial and political division of the State of Maine". *Id.*, p. 465.

It is necessary to next perceive whether a public secondary school teacher is an "authorized representative" of the city wherein he is employed, within the meaning of 6 M.R.S.A. § 12. Employment of teachers under Maine law is governed by 20 M.R.S.A. § 161, 5; the Superintendent of Schools nominates the teacher or teachers proposed to be employed. The local school board or directors (if a school administrative district) approve or disapprove the nomination or nominations and employment of the teacher or teachers so approved. This employment rests upon the superintendent. *Michaud v. Inhabitants of St. Francis*, 127 Me. 255, 143 A. 56. Clearly, under our laws, the public school teacher possesses rights accruing out of contract.

The occupation of a public school teacher is not that of a public officer though the employment be in a public capacity; instead the position is that of employee resting on contract. *Mootz v. Belvea*, 60 N.D. 741, 236 N.W. 358, 75 A.L.R. 1352. In *Whitney v. Rural Independent School Dist. No. 4*, (Iowa) 4 N.W. 2d 394, 140 A.L.R. 137, the court decided that a public school teacher was not a person holding "an official position, or standing in a representative capacity of the employer" within the meaning of a workman's compensation act. We invoke an analogy here; viewing public school teachers not to be a city's "authorized representative" possessing standing to do business with the Aeronautics Commission under 6 M.R.S.A. § 12. Admittedly, a teacher performs duties which are public or quasi public in character, this is not sufficient to create a municipal public office in the sense described in 30 M.R.S.A. § 1901, 7, 8:

"7. Municipal officers. 'Municipal officers' means mayor and aldermen of a city, and the selectmen of a town.

"8. Municipal official. 'Municipal official' means any elected or appointed member of a municipal government."

Any grant of funds by the Director to the reference teacher might well result in the doing of a vain thing because in the final analysis, the local school board "directs the general course of instruction"; thus, the establishment of the proposed aviation course of instruction. 20 M.R.S.A. § 473, 2. While the members of a city's school board are thought to be municipal officials of the city, 30 M.R.S.A. § 1901, 8; 20 M.R.S.A. § 471, 472, 476, the employees of the board are not.

JOHN W. BENOIT, JR.  
Deputy Attorney General

June 25, 1970  
Education

Keith L. Crockett, Secretary-Treasurer  
Maine School Building Authority

Town's Method of Voting upon Articles Prepared by Maine School Building Authority;  
Secret Ballot.

*SYLLABUS:*

In absence of a petition to the contrary, it is not necessary for a town to utilize the secret ballot procedure when voting upon articles prepared by the Maine School Building Authority pursuant to 20 M.R.S.A. § 3507, notwithstanding the town has accepted the secret ballot procedure relating to election of officers.

*FACTS:*

The Maine School Building Authority, after receiving an application from the Town of Windsor for construction of a school project in Windsor, has authorized the inhabitants of the Town to vote upon the acceptance or rejection of a proposed Lease Agreement with the Authority. 20 M.R.S.A. § 3507. The Secretary-Treasurer of the Authority has suggested the form of the articles to be voted upon at a town meeting in Windsor, which articles have been forwarded to the officials of the Town in the usual manner. Voters haven't asked for printed articles.

The Town of Windsor has accepted the provisions of the Maine Statutes relating to elections of municipal officers by secret ballot. *R.S., 1954, c. 90-A, § 37; now 30 M.R.S.A. § 2061.*

Although elections of town officials occur by secret ballot in Windsor, the manner of voting on other business at Windsor town meetings is by a show of hands.

*QUESTION:*

Is it necessary for the inhabitants of the Town of Windsor to utilize the secret ballot procedure when voting upon articles prepared by the Maine School Building Authority pursuant to 20 M.R.S.A. § 3507, in absence of a petition requesting printed articles?

*ANSWER:*

No.

*REASON:*

Initially, a reading of 30 M.R.S.A. 2061 points up a specific directive that a municipality is required to have questions printed on ballots whenever the questions are "required by statute to be submitted to a vote."

"5. Ballots, specimen ballots and instruction cards.

Ballots, specimen ballots and instruction cards shall be prepared by the clerk according to the following provisions:

" \*\*\*.

"C. Any question required by statute to be submitted to a vote shall be printed below the list of candidates." (*Id., paragraph 5, C.*)

Thus, it is necessary to determine whether articles proposed by the Maine School Building Authority pursuant to 20 M.R.S.A. § 3507 are considered to be questions "required by statute to be submitted to a vote" in Windsor. The second paragraph of § 3507 calls for voter action relative to contracts, leases or agreements between a municipality and the Authority.

"No contract, lease or agreement between an administrative unit and the Authority shall be valid unless first approved by the vote of a majority of the

residents of a town voting on this question, or of each town involved in the case of a community school district voting on this question, or by the residents of a School Administrative District in the manner provided in section 225. \*\*\*”

Query: Do the words “any question required by statute to be submitted to a vote” (§.2061, 5, C) mean questions placed into the statutes by the lawmakers such as those existing in 20 M.R.S.A. § 22 (formation of school administrative districts), or does the reference language imply something different, i.e., the mere necessity of voting itself, as stated in 20 M.R.S.A. § 3507 above? The provisions of the statutes relating to the Maine School Building Authority, 20 M.R.S.A. § 3501 – 3517, do not recite the specific language of the questions to be utilized pursuant to § 3507.

For reasons given herein, the inhabitants of Windsor may vote upon the proposed articles (articles not involving election of officers) in the same fashion as Windsor conducts its business at regular or special town meetings.

In the case entitled *Frank E. Hancock, Attorney-General ex rel. George L. Atkins et als v. Robert S. Fuller, Selectman, et als*, Kennebec County Superior Court Docket (No Law Court appeal exists) the court issued written Findings and Conclusions dated March 9, 1960, relating to a Writ of Mandamus brought by voters of Farmingdale against the Selectmen of the Town requiring the printing of articles on the ballot concerning the question of the *formation of a proposed school administration district*. (The pertinent statutory provisions existing at that time relating to the formation of a proposed school administrative district were recited in *R.S., c. 41, § 111-F, IV. Now: 20 M.R.S.A. § 215.*) It was fact, in the case, that a sufficient number of the voters of the town had seasonably presented a petition to the selectmen requesting a secret ballot on the questions involving the formation of the district. No such petition exists in this case; and the case is thus distinguishable. In the Court’s findings and conclusions calling for the printing of the school administrative district formation questions on the ballots, reliance was placed upon both the statute relating to the presentation of a petition to the selectmen requesting the printing of articles, and to the provision of 30 M.R.S.A. § 2061, 5, C: “Any question required by statute to be submitted to a vote shall be printed below the list of candidates.” The cited case gave no answer to the question here: Whether the clause, “any question required by statute to be submitted to a vote” meant any question specifically propounded in the law by the Legislature, or meant something else, i.e., the need to vote per se. Continuing with the analogy of a vote on school administrative district formation questions, amendments made to the statutes relating to the formation of school administrative districts (made since the date of the noted decision) reasonably lead to a conclusion that, absent a petition for secret ballot procedures, the Legislature intends that the words: “any question required by statute to be submitted to a vote”, mean the questions specifically enacted by the lawmakers for voter attention. If otherwise, the lawmakers would not have found it necessary to amend 20 M.R.S.A. § 215,4 to permit administrative units to vote upon specified articles relating to the formation of school administrative districts “in the same fashion as the units conduct other business at regular or special town meetings.” Again, the laws relating to the Maine School Building Authority contain no specific questions propounded by the Legislature for presentation to the voters when considering contracts, leases and agreements between the Authority and municipalities.

Any interpretation of the subject clause to mean the mere act of voting itself would do violence to the provisions of the statutes relating to the procedures by which municipalities conduct business. For example, the several fiscal matters which may come before a municipality pursuant to 30 M.R.S.A. § 5101 – 5108 require a vote. In *Lovejoy v. Inhabitants of Foxcroft*, 91 Me. 367, 40 A. 141, the Court held that in order to render

a town liable to repay money borrowed and expended for the town by a town officer or agent, the municipality must have previously authorized or subsequently ratified the borrowing by vote at a legal town meeting upon a sufficient article in the warrant. Extending the meaning of the clause to the several matters recited in the municipal fiscal provisions of the statutes, thus calling for the printing of such fiscal questions on the ballot, would require that all town meeting action be conducted under the secret ballot provisions; not just the town's election of officers. Moreover, such an interpretation would render the provisions of 30 M.R.S.A. § 2061, 4 (petition procedure for placing an article on the ballot) a nullity because everything coming before the voters would appear on the ballot.

JOHN W. BENOIT, JR.  
Deputy Attorney General

July 7, 1970  
Mental Health and Corrections

G. Raymond Nichols, Director  
Probation and Parole

Commutation Power of Governor and Council

*SYLLABUS:*

Although, under the commutation power vested in the Governor and Council they can not per se change a felony to a misdemeanor, they can commute a sentence for a felony to provide for eligibility for parole hearing equivalent to that applicable to a sentence following conviction for commission of a misdemeanor, such reduction of period of confinement being entirely within the commutation power.

*FACTS:*

One, Howard V. Alley, was convicted of possession of a narcotic drug under 22 M.R.S.A. 1964, § 2362. At the time of commission of the offense it was, under that section, a felony. Following conviction in the Superior Court and pending his appeal to the Supreme Judicial Court the 104th Legislature revised the above statute by P.L. 1969, Chapter 433, making such offense a misdemeanor.

The Supreme Judicial Court upheld Mr. Alley's conviction and he is currently serving a sentence at the Men's Correctional Center for a crime which, as above stated at the time of commission was a felony. Mr. Alley, by his attorney, has petitioned the Governor for commutation of his sentence in view of the legislative revision of the statute under which the crime of which Mr. Alley was convicted, is now a misdemeanor. Specifically, Mr. Alley has asked the Governor with the advice and consent of the Council to commute his sentence from a felony to a misdemeanor.

*QUESTION:*

Although, without authority to change the designation of the offense, has the Governor with the advice and consent of the Council authority to commute the sentence in question, so that the period of confinement prior to parole eligibility, may be equivalent to the period of confinement applicable to a sentence following conviction for the commission of a misdemeanor?