

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

12 M.R.S.A. §§ 4811-4814 (Chapter 424) on the other hand permits and indeed requires the Maine Land Use Regulation Commission together with the Environmental Improvement Commission, after consultation with the State Planning Office, to adopt ordinances to “prevent and control water pollution; protect spawning grounds, fish, aquatic life, bird and other wildlife habitat; control building sites, placement of structures and land uses; conserve shore cover, visual as well as actual points of access to inland and coastal waters and natural beauty”.

It is apparent that the Legislature in 12 M.R.S.A. §§ 4811-4814 has chosen to deal specially with Shoreland Areas despite other applicable state laws and regulations. It is further apparent that the limitations upon the Maine Land Use Regulation Commission’s power in Management Districts as to regulating agricultural and forest product activities is only with regard to “land use guidance standards” adopted pursuant to Chapter 206-A of Title 12 of M.R.S.A.

Ordinances for Shoreland Areas, adopted by the Maine Land Use Regulation Commission, together with the Environmental Improvement Commission, after consultation with the State Planning Office, must not only be consistent with the purposes of 12 M.R.S.A. §§ 4811-4814, but must be in furtherance of these purposes. If, in the judgment of the two Commissions, ordinances controlling agricultural or forest product activities are necessary to carry out the purposes of 12 M.R.S.A. §§ 4811-4814, then it is their joint duty to enact such ordinances. While the Maine Land Use Regulation Commission may not adopt these ordinances under the guise of “land use guidance standards” in “management districts”, there is no reason that reference to such ordinances may not be made in the Maine Land Use Regulation Commission Regulations. It should be noted, however, that enforcement of such ordinances will require joint action by the Maine Land Use Regulation Commission and the Environmental Improvement Commission.

E. STEPHEN MURRAY  
Assistant Attorney General

March 3, 1972  
Education

Asa A. Gordon, Assistant Commissioner

Requirements for approval of private schools for attendance, tuition and State subsidy purposes

*SYLLABUS NO. 1:*

State subsidy may not be paid to an administrative unit which sends pupils to a private school which does not employ certified teachers and does not maintain a school year of 175 actual school days.

*SYLLABUS NO. 2:*

The Commissioner of Education may not approve:

(A) Private schools which do not employ all certified teachers and which do not maintain a school year of at least 175 actual school days, and

(B) Private schools which operate the required 175 actual school days per year, but do not employ all certified teachers.

*SYLLABUS NO. 3:*

When the parents of pupils pay the tuition for their attendance at a school which does not operate 175 actual school days per year, the school committee, the board of directors or the superintendent of schools in the town where such pupils reside may not excuse their absence from the town schools pursuant to 20 M.R.S.A. § 911.

*FACTS:*

There are some 50 towns in the State of Maine which operate no schools and, of necessity, send their children to either private or public schools at town expense. The State subsidizes these towns for each student sent out at public expense whether they go to public or private schools.

Some parents in various towns and administrative units throughout the State choose to send their children to private schools at their own expense. Title 20 M.R.S.A. § 911 permits these students to be excused from public school attendance, if the child obtains equivalent instruction for a like period of time in a private school approved by the Commissioner of Education.

The following questions have been raised in connection with these facts:

*QUESTION NO. 1:*

May State subsidy aid be paid to an administrative unit which sends pupils to a private school which does not employ certified teachers and does not maintain a school year of 175 actual school days?

*QUESTION NO. 2:*

May the Commissioner of Education approve: (A) private schools which do not employ all certified teachers and which do not maintain a school year of at least 175 actual school days, and (B) private schools which operate the required 175 actual school days per year, but do not employ all certified teachers?

*QUESTION NO. 3:*

When the parents of pupils pay the tuition for their attendance at a school which does not operate 175 actual school days per year, may the school committee, the board of directors or the superintendent of schools in the town where such pupils reside excuse their absence from the town schools pursuant to 20 M.R.S.A. § 911?

*ANSWERS:*

- No. 1. No.
- No. 2(A) No.  
(B) No.
- No. 3. No.

*REASONS (NO. 1):*

The last sentence of 20 M.R.S.A. § 1289, as amended by P.L. 1971, chapter 530,

section 18, provides in part that,

“ . . . the expenditure of any administrative unit for schooling of pupils as provided in this section *shall be subject to the conditions of 1291 and 1292 for the purposes of state subsidy to the administrative unit.*” (Emphasis supplied.)

One of the “conditions of sections 1291 and 1292” is that, in a situation where a town does not operate any schools, the pupils from that town must attend “an approved secondary school.” Furthermore, section 3452, subsection 5 provides that an academy whose trustees have contracted with a town for the education of that town’s pupils pursuant to section 1289 is considered to be a “secondary school.” It would, therefore, appear that, in order for an administrative unit to be eligible for State subsidy aid toward the cost of sending its pupils to a private school or academy, such private school or academy must be “an approved secondary school.” It also appears from section 1344 that an academy may provide approved secondary education under the conditions of sections 1291 and 1292,

“when in the judgment of the commissioner from the returns made as provided, it appears that any incorporated academy in the State is prepared to *give instruction equivalent to that required by law to be given in free high schools, that pupils attending said academy are qualified to receive such instruction and that the teachers in said academy are certified or licensed to give instruction in secondary school studies . . .*” (Emphasis supplied).

Finally, with respect to the instructional requirements of State law for all secondary schools, section 1281 provides, in part, that,

“No school shall be given basic approval for attendance, tuition or *subsidy* purposes within this Title unless it meets the following requirements:

“3. Minimum school year. It has a minimum school year of 180 school days of which *not less than 175 shall be actual school days . . .*”

“4. Certified teachers. It employs *only certified teachers.*” (Emphasis supplied).

When the statutory provisions which have been cited and quoted above are read together, they require, as prerequisites to the payment of state subsidy aid to an administrative unit which sends its pupils to a private school or academy, that such school or academy maintain a minimum school year of not less than 175 actual school days and employ only certified and licensed teachers.

*REASONS (NO. 2(A) and (B)):*

As already discussed in connection with Question No. 1, a private academy or school whose trustees have contracted with a town for the education of that town’s pupils, pursuant to section 1289, is considered to be a “secondary school” under section 3452, subsection 5. Furthermore, under sections 1344 and 1281, no school may be given basic approval for attendance, tuition or subsidy purposes within Title 20 unless, among other things, it maintains a minimum school year of not less than 175 actual school days and employs only certified teachers.

I do note, however, that in your second question you did not state for what purpose the commissioner would give his approval. Therefore, it should be noted that, under the second paragraph of subsection 10 of section 1281, if it is possible for a private school or academy to be accredited by the New England Association of Colleges and Secondary Schools without it employing all certified teachers or without it maintaining a school year of at least 175 actual school days, then “notwithstanding any other provision of Title 20,” the Commissioner of Education *must give basic approval for the purposes of*

*attendance* to any nonpublic secondary school and *for the purposes of tuition* to any nonpublic secondary *boarding* school which is so accredited.

*REASONS (NO. 3):*

Section 911 of Title 20 provides, in part, that,

“necessary absence may be excused by the superintending school committee, school directors or superintendent of schools or teachers acting by the direction of either. Such attendance shall not be required if the child obtains equivalent instruction, *for a like period of time*, in a private school in which the course of study and methods of instruction have been approved by the commissioner . . . ”

(Emphasis supplied)

As previously noted in connection with both Questions 1 and 2, section 1281 of Title 20 requires that all schools approved for attendance, tuition or subsidy purposes must maintain a minimum school year of 180 school days, of which not less than 175 shall be actual school days. Assuming that the public schools which these pupils would attend, but for their parents sending them elsewhere, would all be approved schools under the provisions of section 1281, this opinion is based upon the reasoning that the above-emphasized phrase, “*like period of time*”, in section 911, means a period of time which is at least equal to the 175 actual school days per school year which is required for basic approval under section 1281. Therefore, in order for pupils to be excused under section 911 from attendance at their local public schools, they must attend a school which, among other things, maintains a school year of not less than 175 actual school days.

CRAIG H. NELSON  
Assistant Attorney General

March 24, 1972

James C. Schoenthaler, Chairman

Your Memo of March 23, 1972, Requesting Legal Opinion

*SYLLABUS:*

Maine Employment Security Commission may make an increase in contribution rates effective for the calendar quarter in which it finds an emergency exists such as to seriously impair the unemployment compensation fund, and in which it imposes the increase after reasonable notice and public hearing on the matter, as provided in Section 1221, subsection 4, paragraph C of the Maine Employment Security Law (T. 26, Chapter 13, M.R.S.A. 1964, as amended). For such action to be authorized during calendar year 1972, the amount in the unemployment compensation fund must be under \$15,000,000.

*FACTS:*

“Contributions” means the money payments to the State Unemployment Compensation Fund required by the Maine Employment Security Law (Section 1043, subsection 8).