MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years

1967 through 1972

REASONS:

Title 20 M.R.S.A. § 309 provides in pertinent part, that,

"the school committees or boards of directors of various administrative units may file an application with the State Board of Education for the purpose of entering a cooperative agreement to carry out a *specified educational function.* The application shall be in a form and containing such information as required by the board. An agreement so applied for *shall* be submitted to the citizens of each unit for acceptance or rejection." (Emphasis supplied)

Although it would seem from the above quoted provisions that, if an application for the purpose of entering a cooperative agreement sets forth the "specified educational function" to be accomplished and is in the form and contains such information as required by the Board, the State Board of Education must prepare the cooperative agreement for submission to the citizens of each administrative unit involved for acceptance or rejection, it must first be determined in each case whether the proposed cooperative venture is a proper "specified educational function" which the Legislature intended should be carried out by means of a cooperative agreement. Unfortunately, no specific definition of the key phrase, "specified educational function," is given in either section 309 or in any other section of Title 20. It does appear, however, from the provisions of the second paragraph of section 309, that the "specified educational functions" that are to be carried out by cooperative agreement must be capable of being funded and budgeted for on an "annual" basis. This requirement for annual funding and budgeting of cooperative ventures would seem to preclude the construction of a school by means of a cooperative agreement.

Furthermore, when section 309 of Title 20 was enacted, the provisions of Title 20, Chapter 11 (§§ 351-360) had already been in existence, in substantially the same form, for some 24 years. These provisions of Chapter 11 contain specific procedures whereby two or more towns or administrative units may combine their resources by forming, organizing and operating a Community School District for the purpose of constructing and operating a school or schools.

In view of the fact that the Legislature is presumed to have been aware of the existence of chapter 11 when it enacted section 309, it would not seem reasonable to construe the provisions of that section as being intended by the Legislature to provide a second procedure for accomplishing the same purposes. Instead, it would appear that this newly enacted section was intended for use in carrying out specific educational projects and programs that are more limited, in scope and function, than the construction and operation of an entire school.

CRAIG H. NELSON
Assistant Attorney General

April 19, 1972
Adjutant General

E. W. Heywood, Adjutant General

Adjutant General – Group Life Insurance

SYLLABUS:

State funds may not be used by the Adjutant General to pay the premiums for life

insurance coverage for National Guard members during State ordered active duty.

FACTS:

Stated in the question.

FIRST QUESTION:

If sufficient State funds were available to the Adjutant General, would it be proper for him to expend such funds to pay the premiums for life insurance coverage for members of the National Guard during any period of performance of State ordered active duty?

SECOND QUESTION:

Were the State active duty or "Militia" Insurance Plan operative for the Maine National Guard, is there any reason why the provisions of Title 39 would not apply?

ANSWERS:

1. No.
2. Moot.

REASONS:

Nothing in the statutes expressly authorizes the Adjutant General to expend State funds to purchase life insurance coverage for members of the National Guard. Nothing has been found in any statute which might fairly be said to imply such authority. On the other hand, several statutes appear to negate any such authority.

The Legislature has expressly provided for group life insurance coverage for State employees. It has also provided the method of operation of such a program, with express provisions requiring premium payment by the employees. See Chapter 101, Title 5, Revised Statutes. This chapter is made applicable to "employees" as defined in 5 M.R.S.A. § 1001, subsection 10, which states, in pertinent part,

> " 'Employee' shall mean any regular classified or unclassified officer or employee in a department. . . ."

5 M.R.S.A. § 711 states that

> "The unclassified service comprises positions held by officers and employees who are:
>
> ". . . .
>
> "6. Military. Officers and enlisted men in the National and Naval Militia of the State."

Hence, a member of the National Guard while engaged in State ordered active duty would be a "State employee." Such statutory provisions would seem to convey a negative inference as to the authority of any State agency, including the Adjutant General, to provide wholly-State-paid life insurance for any of its employees. It is recognized that 5 M.R.S.A. § 1151, subsection 1, authorizes the Board of Trustees to provide regulations excluding certain employees "on the basis of nature and type of employment or conditions pertaining thereto, such as, but not limited to, emergency, temporary or project employment and employment of like nature." Assuming that such

regulations excluded National Guard members from eligibility for the group life insurance coverage provided in subchapter VI, chapter 101, of Title 5, Revised Statutes, this circumstance would not alter the apparent State policy as indicated by the Legislature, that life insurance should not be provided free to State employees.

25 M.R.S.A. § 712 specifies the various powers and duties of the Adjutant General. One paragraph of that section provides:

> "Without cost or liability to the State at any time, the Adjutant General may enter into insuring agreements with authorized insurance carriers for group life insurance or group health and accident insurance or prepayment plans for hospital and medical service or insurance for the army and air technicians employed by the military establishments as state employees and paid from federal funds."

While the above-quoted provision applies to certain federally paid State employees of the military establishment, the expression – "Without cost or liability to the State at any time" – indicates a policy of not providing State paid life insurance.

In view of the negative answer to the first question, the second question would seem to be entirely academic at this time.

CHARLES R. LAROUCHE
Assistant Attorney General

April 28, 1972
State Planning Office

To: Philip Savage

The Mandatory Zoning and Subdivision Control Law (12 M.R.S.A. §§ 4811 – 4814, P.L. 1971, c. 535).

SYLLABUS:

The mandatory zoning requirements of The Mandatory Zoning and Subdivision Control Law (12 M.R.S.A. §§ 4811 - 4814, P.L. 1971, c. 535) does not apply to streams other than rivers.

FACTS:

The Mandatory Zoning and Subdivision Control Law, 12 M.R.S.A. §§ 4811 - 4814 (P.L. 1971, c. 535) requires municipalities to zone "shoreland areas" by June 30, 1973. "Shoreland areas" are defined in section 4811 as land areas "within 250 feet of the normal high water mark of any navigable pond, lake, river or salt water body."

QUESTION:

Are "streams" included within the statutory definition of "shoreland areas?"

ANSWER:

Only streams which are rivers are included within the statutory definition of "shoreland areas."