

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

by the explicit language in 5 M.R.S.A. § 1122, subsection 5. The definitive treatment in such specific and unambiguous words in this latter section must be viewed as creating a limitation on the general provision in 5 M.R.S.A. § 1092, subsection 8.

CHARLES R. LAROUCHE
Assistant Attorney General

September 8, 1972
Educational & Cultural Services

Asa A. Gordon, Assoc. Comm., Educ. Mgmt. Res.

Fluoridation of Individual School Water Supplies

SYLLABUS:

A local public school committee or board of directors may accept a gift of a fluoridation system for the water supply used in a school building. However, the committee or board may not, in the absence of prior approval of the municipality or municipalities served by the public school, authorize the operation of such a system.

FACTS:

The State Department of Health and Welfare has available approximately \$20,000.00 in Federal Funds which it desires to donate to various school officials to be utilized to provide fluoridation systems in their respective public schools. There are 20 prospective donee schools, none of which is served by a municipal water supply.

QUESTION 1:

May a local school committee or board of directors accept a gift of a fluoridation system for the water supply used in a school building?

ANSWER TO QUESTION 1:

Yes.

QUESTION 2:

May a local school committee, in the absence of prior approval of the municipality or municipalities served by the public school, authorize the operation of a fluoridation system for the water supply used in a school building?

ANSWER TO QUESTION 2:

No.

REASONS:

There is nothing in the laws of the State which would prohibit a local public school committee or board of directors from accepting a gift of a fluoridation system for the

water supply used in a school building. Title 20 M.R.S.A. § 308 provides School Administrative Districts with broad authority to accept and receive gifts of this nature. That statute provides, in pertinent part:

“1. *Outright or in trust.* A School Administrative District may accept and receive money or other property, outright or in trust, for any specified benevolent or educational purpose.”

A more difficult question is raised concerning whether local officials have the power and authority to independently decide to add fluoride to the school’s water supply, or whether they must first secure approval for such fluoridation from the municipality or municipalities served by the school.

22 M.R.S.A. § 2434, entitled “Fluoridation” and § 2435, entitled “Authorizations,” respectively, provide, in pertinent part:

“No public utility *or other agency operating a public water supply* shall add any fluoride to such water supply without approval of the department [of Health and Welfare]. The department is authorized to make such rules and regulations as it deems necessary to carry out this section.

“No such public utility *or agency* shall add any fluoride to *any such water supply* without first having been authorized to do so by the municipality or municipalities served by it . . . ” (Emphasis supplied)

The phrases “or other agency operating a public water supply” and “public water supply” are nowhere defined in the statutes, the Rules and Regulations promulgated by the Department of Health and Welfare pursuant to 22 M.R.S.A. § 2434 or the case law. Nor does the legislative history of these provisions aid in the interpretation thereof. Accordingly, we must look to the objects and purpose of the legislation under consideration to construe the meaning of these phrases.

One of the questions which we must resolve is whether the phrase “other agency operating a public water supply” as used in the statute, embraces public schools which secure their water from sources other than a municipal water system, or whether such schools are beyond the scope of the statute. For the reasons which follow, in our opinion, public schools are required to comply with the statute.

“Agency operating a public water supply” may mean either a public agency, or an agency, public or private, which supplies water to the public. If the former interpretation is given to this language, it would clearly include those public schools which secure their water from sources other than a municipal water system, because such schools are, *ipso facto*, public institutions.

In order to determine whether the latter interpretation of the phrase would include public schools having their own water supplies, we must first address ourselves to the meaning of the phrase “public water supply.” As used in the statutes, is the phrase “public water supply” limited to the public at large or general public, or does it also include particular segments of the public such as school children? For the reasons which follow, we feel that the phrase is not limited to the general public only, but also includes certain particular segments of the public such as school children.

In our opinion, the philosophy behind the legislative scheme is to leave it up to the various municipalities to determine for themselves whether or not to fluoridate their water. This purpose would be substantially, if not entirely, undercut if all school children of a particular municipality were to be subjected to fluoridated water on a daily basis, even though the community as a whole disapproved of fluoridation. If the legislature intended school boards to have the power to fluoridate the water used in their respective schools, it could have expressly so provided.

Accordingly, on either interpretation of the language “other agency operating a public

water supply," local schools maintaining their own sources of water are within the meaning of the phrase, are subject to the statute, and must, therefore, secure the approval of the municipality or municipalities served by the school, before they may lawfully permit the fluoridation of the water used in the school.

MARTIN L. WILK
Assistant Attorney General

September 7, 1972
Personnel

Nicholas L. Caraganis, Director

Classified State Employees – Dual Employment – Executive Director, Maine Municipal Bond Bank – Clarification of Rule 5.2 (d) of the Personnel Law and Rules.

SYLLABUS:

A full-time classified State employee is not prohibited from assuming the position of, and receiving compensation for acting as, Executive Director, Maine Municipal Bond Bank, while continuing to maintain his or her present full-time classified position, provided that the position of Executive Director is not incompatible with, and does not directly or indirectly interfere with, the proper exercise and performance of the employee's present duties and responsibilities. Rule 5.2 (d) of the Personnel Law and Rules, under certain circumstances limits the amount of compensation a classified employee may receive from the State, but does not apply where the State has by statute otherwise provided for the payment of a State employee's compensation, or where such compensation relates to a position in State service wholly unrelated to the employee's present position.

FACTS:

At a Special Session of the State Legislature in 1972, a Bill was enacted entitled "Maine Municipal Bond Bank Act." Section 5164 of the Act (30 M.R.S.A. §§ 5161, *et seq.*) declares that "the bank is constituted as an instrumentality of the State exercising public and essential governmental functions," and that the exercise by the bank of the powers conferred upon it "shall be deemed and held to be an essential governmental function of the State."

The Act further provides that the bank's board of commissioners "shall appoint an executive director who shall also serve as both secretary and treasurer" and that the board of commissioners "shall fix the duties and compensation of the executive director."

We are informed that the compensation of the Executive Director will be \$5,000.00 per annum. We are further informed that the Executive Director's duties will initially entail acquainting municipal officials with the purposes of the Maine Municipal Bond Bank and thereafter involve assisting these officials in the preparation and submission of loan applications. We have been advised that the initial contact work (which should be completed in approximately six months) will be undertaken during the evening after