

MAINE STATE LEGISLATURE

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October 26, 1973

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Educational and Cultural Serv.

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The Department of Educational and Cultural Services (DECS) has asked questions concerning financial aid for an exceptional (handicapped) child (memos of October 3 and 16, 1973). The main question is whether or not the State can legally reimburse an administrative unit's expenditure, should it occur, for the educational costs of the child involved. The general question can be broken down into two specific ones: (1) Is the parent of the child entitled to the public education rights within the administrative unit involved, by reason of his domicile, i.e., is the parent domiciled within the unit? and (2) If so, what is the extent and nature of these rights and how are they procedurally secured?

The first specific question is answered with reference to 20 M.R.S.A. § 859 which states, in part, that:

" . . . every person between the ages of 5 and 20 shall have the right to attend as a full-time student . . . the public school in the administrative unit in which his parent or guardian has residence. . . . Residence as used in this section shall mean the administrative unit where the father maintains a home for his family."

The definition of "residence" in this statute has been interpreted to be synonymous with "domicile" (1963-64 Atty. Gen. Rep. 81, 82; Shaw v. Small, 124 Me. 36). Domicile is established when two events concur; physical presence in the place in question, and an intention to have that place as one's permanent legal residence. A minor's domicile is generally that of his parents or guardian. The facts here show that the exceptional child's father grew up in Hallowell, Maine, and enrolled in the Coast Guard Academy after high school, before reaching his majority, so his domicile before entering the Coast Guard was Hallowell. Since his graduation from the Academy in 1959, he has remained in the Coast Guard, being stationed at various places throughout the United States, most recently at Governor's Island, New York. If the facts show that the parent has not intended to establish any of these places as his domicile, the existing one continues in effect, especially in the cases where the person is in the armed forces (Brewer v. Linnaeus, 36 Me. 428; Stevens v. Allen, 139 La. 658, 71 So. 936; Harris v. Harris, 205 Iowa 108, 215 N.W. 661). Here, the parent has lived in various places to which the Coast Guard assigned him. He considers Hallowell his home. He receives mail in Hallowell concerning state and municipal matters; he has a Maine driver's license; he has always voted and now votes in Hallowell; and he paid a 1973 personal property tax on a boat of \$38 out of which \$18.81 goes to schools, \$18.43 to the City of Hallowell and \$.76 to the

County of Kennebec. He also owns real estate in Thomaston, Maine, purchased about 1969-70, but so far it is only a summer residence.

In a similar case where a man had entered the United States Naval Academy in 1927 after living with his parents in Texas, and had never established another permanent residence but was constantly shifted by the Navy, and made infrequent visits to Texas where no permanent room was set aside for him, and the man always considered Texas his home, and had a Texas driver's license and car registration, and resided in Maine in Federal Government quarters ancillary to his naval service, it was held that the man was still a domiciliary of Texas (Schultz v. McAfee, 169 F. Supp. 210, in Me. D.C., 1958). Here, the service man's domicile of origin was Hallowell and since he has not established another one, Hallowell remains his present domicile. Since the parent is domiciled in Hallowell, his children have a right to public education in the administrative unit serving him.

The second specific question is answered with reference to 20 M.R.S.A. §§ 3121-3141 which provides for educational opportunities for exceptional children. Section 3127 calls for each administrative unit to "provide appropriate education and training for exceptional children. . . by any one or a combination of the following methods." One of these methods is by "contract with, or tuition to, another administrative unit or any approved public or private agency or institution. . . Such contract shall be subject to approval by the commissioner." Also, the last paragraph of section 3127 states that in addition to the specified methods, the "unit shall make any other provisions, subject to approval by the commissioner, to insure the education of all exceptional children as may become necessary." These provisions seem to clearly allow the unit to accommodate a child in the manner contemplated here, i.e., placement in The Kolburne School in Massachusetts, subject to the commissioner's approval of the contract or arrangements. The administrative unit (Hallowell) has a voice regarding placement of the exceptional child outside the unit.

Is the unit legally responsible for a placement it neither obtained nor approved, and if it pays, can the State properly reimburse the unit? The answers to both parts of that question are no.* It appears that the unit must at least approve the placement of exceptional children in a special school, indicating why the regular program is insufficient. At any rate, the commissioner must approve such a placement under § 3127(2) or its last paragraph, and the tuition, room and board charges must be approved by the commissioner as noted (§ 3136) before reimbursement may properly occur.

* Strictly construed, the first part of the question is not a State question, but the answer is so obvious that no error flows from stating it.

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To summarize, the facts permit the finding that the parent's domicile is Hallowell, Maine, and this then entitles his children to the public education benefits of that municipality. However, placement of an exceptional child in a special school outside the regular programs offered within the district must be approved by the local administrative unit and by the commissioner before State aid may be properly dispensed to the unit.

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