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February 28, 1974

Asa Gordan, Deputy Commissioner

Educational and Cultural Services

John W. Benoit, Jr., Deputy

Attorney General

Maine Law Relating to Education of Students Living on Federal Property

This is a response to your interdepartmental memorandum dated February 4 requesting that this office answer four questions set forth in a companion memorandum dated January 25, 1974, you received from the office of the Region One Commissioner of the Federal Department of Health, Education and Welfare. Facts recited in the memorandum from the Federal Government show that Region One Attorney Samuel C. Fish received a telephone call January 16, 1974 (from the Federal Central Office) advising him that Limestone and Machiasport, Maine, had requested tuition payments from the Federal Government to aid those municipalities in educating children residing on Federal property, because of the recently enacted Maine law on the subject (P.L. 1973, c. 556). Limestone and Machiasport have indicated to Federal authorities that because they will not be receiving State aid to educate these Federal children, Federal tuition payments are necessary. The Region One Attorney poses four questions, each of which is answered below.

1. The first question is as follows:

"After July 1, 1974 --

(1) Is it legally permissible under Maine law for a school administrative unit to provide free public education to children residing on land under control of the Federal Government, or any agency thereof, or on a Federal Military Reservation, or does Chapter 556 of the Public Laws of 1973 require a school administrative unit to charge tuition for educating these children in their public schools?"

The answer to the first part of the question is no, and to the second part yes, assuming the second part of the question means tuition to be paid by the Federal Government. The controlling provision of statutory law is found in 20 M.R.S.A. § 3713, sub-§ 3, ¶D.

"When a unit enrolls pupils who reside on land under control of the Federal Government, or any agency thereof, or on a Federal Military Reservation, such pupils shall not be considered as resident pupils for subsidy purposes but special arrangements may be made by the State or any school administrative unit, or both, to provide elementary and secondary

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school privileges in cooperation with the United States Government for a child or children residing on land under control of the Federal Government, or any agency thereof, or on a Federal Military Reservation. It is the intention of the Legislature that such special arrangements shall fully protect the rights of all pupils and shall protect the municipalities against the necessity of additional local appropriations because of federal pupils. Every unit eligible to receive assistance in federally affected areas shall annually file application to receive such funds." (Emphasis supplied.)

2. The second question is as follows:

"After July 1, 1974 --

Is a school administrative unit required under Maine law to provide free public education for children residing on land under control of the Federal Government, or any agency thereof, or on a Federal Military Reservation, or is it legally permissible under Maine law for a school administrative unit to charge tuition for educating these children?"

The answer to the first part of the question is no, and to the second part, yes, assuming the second part of the question means tuition to be paid by the Federal Government. The basis for the answer to question 2 is the same provision of State law quoted above.

3. The third question asks:

"After July 1, 1974 --

May tax revenues of the State of Maine be expended for the free public education of children residing on land under control of the Federal Government, or any agency thereof, or on a Federal Military Reservation?"

The answer to this question is no, reading the words "tax revenues of the State of Maine" as meaning State subsidy. Again the basis for the answer is the provision quoted above.

4. The last question asks:

"After July 1, 1974 --

May tax revenues of a school administrative unit in Maine be expended for the free public education of children residing on land under control of the Federal Government, or any agency thereof, or on a Federal Military Reservation?"

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The answer is no. Note that the quoted statutory provision sets forth legislative intention that any special arrangements entered into between the Federal Government and the administrative unit or the State, or both, shall protect the municipality from the necessity of expenditure of additional local appropriations for the education of pupils residing on Federal property. While that language is an expression of legislative intention, I know of no statutory provisions authorizing an administrative unit to expend tax revenues for the free public education of children residing on land under control of the Federal Government.

This memo should be read as expressing our proposed opinion on the stated questions. We do not view the situation as one calling for the issuance of a formal opinion. We are not unmindful of the fact that quite some time ago, questions were asked by the Department of Educational and Cultural Services of the Federal Government respecting the interpretation of Federal law in this area; questions which have not yet been answered.

If I can be of further assistance in this matter, please contact me.

JOHN W. BENOIT, JR.
Deputy Attorney General

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