

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date April 30, 1975

To H. Sawin Millett, Jr., Commissioner Dept. Educational and Cultural Serv.
From John W. Benoit, Jr., Deputy Dept. Attorney General
Subject Portable Classrooms in Winthrop

This is a reply to your five questions relating to the portable classrooms due to be abandoned in Winthrop some time in June, 1976. The facts stated briefly are that in 1972, the State Board of Education approved Winthrop's request to purchase several portable classrooms. A copy of the Certificate of Approval is attached to this memo. The meeting of the State Board of Education at which the approval took place occurred June 19, 1972, and a copy of the minutes of the meeting having reference to the portable classrooms is attached to this memo.

The Certificate of Approval recited, among other things, that

"The above portable classrooms are to be used on a temporary basis and upon termination of use, a proportionate share of proceeds realized from their sale shall be reimbursed to the State by the Town of Winthrop."

The total cost of the portable classrooms involved was \$165,447.96. The units were sold directly to the Winthrop School Department by a private concern. Of the total cost of the units, the State has reimbursed Winthrop \$145,419.70. When the State Board of Education approved the purchase of the portable classrooms in 1972, it was expected that Winthrop would receive 28% State aid on its capital outlay expenditures. The percentage of State aid was in fact approximately 87% due to L.D. 1994. Winthrop would like to retain some of the seven portable classroom units for non-classroom purposes. At the same time, several administrative units in the State could make use of these facilities as classrooms. We are told the units are in excellent condition and continue to be well suited for classroom use.

1. "May the State Board of Education refuse to permit the Town of Winthrop to retain any or all of the units?" Neither the Certificate of Approval nor the minutes of the State Board meeting of June 19, 1972, contain any reference to the period of time Winthrop is allowed to use the facilities as classrooms. Therefore, so long as Winthrop continues to use the facilities as classrooms, the State Board of Education cannot refuse to permit such use by the town. On the other hand, when Winthrop no longer has need for

H. Sawin Millett
Page 2
April 30, 1975

the portable classrooms and proposes to utilize the facilities for some other purpose, the State Board of Education may register dissent to such non-classroom use.

2. Must the units be sold, as is implied in the Certificate of Approval? If the answer is in the affirmative, what portion must be reimbursed by Winthrop to the State? The State Board of Education's own Certificate of Approval indicates that Winthrop is authorized to sell the portable units. As to whether some other arrangement could be worked out, such as a conveyance of the units by Winthrop to the State so that other administrative units may have the use of these facilities, we do not interpret the Board's Certificate of Approval as necessarily barring such a result. In the event of a sale, the proportion to be returned to the State can be determined on the basis the State participated in the purchase of the units; on a ratio that the State's costs bear to the total cost of the units. This would be a reasonable basis for determining the amount of reimbursement to the State, in view of the fact that when the Certificate of Approval was granted, Winthrop was deemed entitled to State aid for capital outlay expenditure to the extent of 28%, but that due to change in Maine law on the subject, Winthrop became eligible for a higher percentage of State aid and thus the State's share of costs in this matter was increased.

3. "May the State Board of Education require Winthrop to relinquish title to the State?" If the answer is in the affirmative, you ask whether it would be appropriate for the State to pay Winthrop 13% of the fair market value? The language in the Board's Certificate of Approval does not require Winthrop to convey the portable classrooms to the State. Earlier, we noted that such a result had not been required by the language in the Certificate; neither is it forbidden, however. As for the second part of this question, Winthrop should receive that portion of funds realized from a sale which is equal to Winthrop's proportion of total costs of the units.

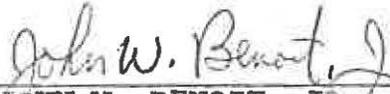
4. "If the State may acquire title, would it be appropriate to transfer title to other school units without cost to the receiving units?" This question is premature. In the event the State should pay Winthrop its portion of the value of the units, it seems reasonable to conclude that the State could make such use of the facilities for school purposes as was appropriate. We can give assistance at some future date, in the event the circumstances contemplated by your question occur.

H. Sawin Millett
Page 3
April 30, 1975

5. "May the State Board of Education authorize the use of the units to other systems if those systems pay the cost associated with removing, transportation?" Again, this question can be answered in the event the State takes title to the classrooms and a decision is made to use those facilities in a local school system or systems.

Trusting this memo sufficiently answers the questions posed in your memo, I remain,

Respectfully yours,



JOHN W. BENOIT, JR.
Deputy Attorney General

JWBJr./ec