

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date March 16, 1976

To Asa A. Gordon, Deputy Commissioner Dept. Educational & Cultural Serv.
From W. G. Buschmann, Asst. Attorney Gen. Dept. Attorney General
Subject Leasing School Facilities (#23)

FACTS:

The Town of York has a vacant, two-room school building. The school committee of the York School Department has decided to retain control over this building until the new high school is completed so that it could be used as a backup facility in case there is an unexpected need for space during the interim. Completion date for the new high school is July 1, 1977.

The school committee has been approached by the York County Counseling Services, Inc., a non-profit organization, regarding the possibility of renting space in the vacant school building as of December 1, 1976.

QUESTION:

May the superintending school committee lease a vacant schoolhouse to a private, non-profit organization?

ANSWER:

See Reasons.

REASONS:

The school committee has the duty pursuant to 20 MRSA Section 473, subsection 1, to provide for the management, custody and care of all school buildings within its jurisdiction. The committee's primary responsibility is to maintain school property for school purposes. If a school building is no longer being used for school purposes, then the committee should act pursuant to 20 MRSA Section 3561 and recommend in writing to the town that the building should be removed from the jurisdiction of the school department.

Although the committee's primary responsibility is to maintain school property for school purposes, it would not be improper if, for a legitimate reason, the school committee were to retain control for a reasonable period of time over a school building which is no longer being used for school purposes. The maintenance of the unused, two-room school building until July 1, 1977, by the committee as a backup facility to cover emergency situations until the new high school is completed would be proper.

A reasonable interpretation of the word "management" as it is used in Section 473, subsection 1, would include the right to lease unused facilities to a non-profit organization such as the York County Counseling Services, Inc. However, if the justification for retaining jurisdiction over the school building is frustrated by a lease (i.e. loss of control over the space within the building so that it can no longer be considered as a backup facility), then it might well be improper for the committee to enter such a lease. However, if the proposed lease agreement had a clause in it making the lease terminable by the committee if the school is again needed for school purposes, then this problem would probably be eliminated.

This opinion supercedes the Opinion of the Attorney General dated March 6, 1947. The concern expressed in that opinion was that since the town could nullify any lease entered into by the superintending school committee by otherwise disposing of the property, the committee did not have authority to enter into a binding lease agreement. However, pursuant to 20 MRSA Section 3561, the town's authority to dispose of the property at a town meeting is dependent upon the town having received a written recommendation from the school committee that the building should be discontinued as a school facility. Therefore, the school committee does have the authority to enter into a binding lease agreement and the town may not summarily undermine that authority.

This opinion is based upon the assumption that there hasn't been any major capital improvements made to the school building which utilized federal funds.

WGB:clk