

MAINE STATE LEGISLATURE

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March 17, 1976

Larry N. Pineo, Assoc. Commissioner

Educational & Cultural Services

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Attorney General

National School Lunch Act

Facts:

The National School Lunch Act was enacted in 1946 by the United States Congress. 42 USC 1751-1764. There have been many amendments to it, the most recent of which is P.L. 94-105 which was passed on October 7, 1975. The Maine Legislature in 1973 enacted 20 M.R.S.A. § 1051, which contains the following provision:

"The State having accepted the provisions and benefits of the Act of Congress entitled 'An Act to Provide Assistance to the States in the Establishment, Maintenance, Operations and Expansion of School Lunch Programs and for Other Purposes' approved June 4, 1946, will observe and comply with said Act, and with any Acts amendatory thereof or supplementary thereto."

The Treasurer of State was designated under 20 M.R.S.A. § 1054 as the custodian of all moneys received under the School Lunch Act. Section 1054 also mandated that he shall disburse the moneys to public schools and to "service institutions as defined in Public Law 90-302" as directed by the Commissioner of Educational and Cultural Services. The School Lunch Act requires that the State match each federal dollar received and disbursed to public and nonprofit private schools by the State with three State dollars. 42 USC § 1756.

Question 1:

Does the Department have legal authority to administer the National School Lunch Act programs for nonprofit private schools and nonprofit private institutions?

Answer 1:

The Department does not have legal authority under 20 M.R.S.A. §§ 1051, et seq. to administer the programs to nonprofit private schools. A "Nonprofit private school" means any private school exempt

from income tax under section 501(c)(3) of the Internal Revenue Code of 1954^{1/} 42 USC § 1760(d)(3).

The Department may administer the programs to those private institutions which fall within the definition of "service institutions" as defined by P.L. 90-302.^{2/}

Question 2:

Does the Department have authority to provide state-appropriated matching funds for meals served in nonprofit private schools?

Answer 2:

No. The School Lunch Program requires that state dollars be matched against each federal dollar received and disbursed by the State for meals served pursuant to the Program in public and nonprofit private schools. Pursuant to 20 M.R.S.A. § 1054 the Treasurer of State is authorized to receive and to disburse moneys only to public schools and to service institutions as defined.^{2/} since there is no statutory authorization for the Department to receive and disburse federal program dollars to nonprofit private schools, there is no requirement nor

^{1/} "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to animals, not part of the net earnings of which inures to the benefit of any private shareholder or individual, nor substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office." Section 501(c)(3) of the Internal Revenue Code of 1954.

^{2/} The "term 'service institutions' means private, nonprofit institutions or public institutions, such as child day-care centers, settlement houses, or recreation centers, which provide day care, or other child care when children are not maintained in residence, for children from areas in which poor economic conditions exist and from areas in which there are high concentrations of working mothers, and includes public and private nonprofit institutions providing day care services for handicapped children." It "also includes public or private nonprofit institutions that develop special summer programs providing food service similar to that available to children under the National School Lunch or School Breakfast Programs during the school year, including such institutions providing day care services for handicapped children." P.L. 90-302.

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authorization for the Department to match these Federal funds^{3/}.

Question 3:

Does the Department have authority to administer the Child Care Food Program for family day care centers?

Answer 3:

Yes. Inasmuch as family day care centers (private homes which operate as day care centers for only a handful of children) provide non-residential child care, as more fully defined in P.L. 90-302, the Department may, through the Treasurer of State, administer the program to such centers.

Question 4:

(Request was orally withdrawn by Mr. Pineo.)

Question 5:

Does the Department have authority to administer the Summer Food Program for private, non-profit, residential, summer camps?

Answer 5:

No. The only summer camps which are defined as "service institutions" are non-residential, day care ones. See 20 M.R.S.A. § 1054 and P.L. 90-302.

Note: See Opinion of the Attorney General, dated July 25, 1968, and, Opinion of the Attorney General, dated July 13, 1946.

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^{3/} Note: There is no requirement for state appropriated matching funds for meals served in "service institutions" pursuant to P.L. 90-302.