

MAINE STATE LEGISLATURE

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May 17, 1978

Honorable Edith S. Beaulieu
State Representative
13 Sheridan Street
Portland, Maine

Re: Public Law 1977, Chapter 637, Private Schools - Secular Services.

Dear Representative Beaulieu:

This responds to several questions you have raised regarding Public Law 1977, Chapter 637, authorizing provision of textbooks and other services to certain students attending non-public schools. I believe the many questions you raised are included within the following four questions:

1. What is the involvement of the Board of Directors or of the School Committee of a school administrative unit?
2. What governmental entity is responsible for the funding of secular services authorized under Chapter 637?
3. What category of students are intended to benefit under this law?
4. What governmental entity will be responsible for delivering the services and will be the owner of the textbooks which are loaned?

ANSWERS:

1. 30 M.R.S.A. § 5104, sub-§ 6, states that the governing board of a school administrative unit shall receive requests from non-public schools for the loan of textbooks to non-public school pupils or parents. The governing board shall have the

responsibility of forwarding the request to the municipality in which the student resides along with a certification that the textbooks are among those which have been approved* by the governing board for use in that school administrative unit. The actual purchase and distribution of the textbooks would be by the municipality; however, it may be desirable for the municipality and the governing board of the school administrative unit to coordinate the purchase and distribution of the textbooks.

Subsection 6 authorizes purchase and loan of:

"Those secular textbooks which have been approved by the school committee or board of directors for use in public schools in the municipality or district. . . ."

On its face, the statute is unclear as to whether, by its terms, it is intended to restrict textbooks to those actually used or to be used in the public schools or whether it would allow purchase of any requested textbook which may be acceptable for use in the public schools.

In Wolman v. Walter, 35 L.W. 4861 (June 24, 1977), the Supreme Court addressed a very similar statutory provision, § 3317.06 of the Ohio statutes (quoted at 45 L.W. 4863). In that case, the parties had stipulated that in practice: "The secular textbooks used in non-public schools will be the same as the textbooks used in the public schools of the state." However, it is unclear whether this was simply a matter of practice in school board approvals or whether the limitation to books actually used in the schools was a matter of statutory interpretation. A footnote in the concurring and dissenting opinion by Justice Marshall indicates that Marshall, at least, understood the provision to potentially encompass purchase of any secular textbooks selected by the non-public schools: "The school has the power to choose the books to be provided. . . ." 45 L.W. 4861 at 4868, fn. 2.

It must also be noted that the broader interpretation, "textbooks which are acceptable for use in public schools," was the subject of the Court's opinion in Meek v. Pittenger, 421 U.S. 349 at 361 (1975) which formed the basis for the Court's opinion sustaining the textbook loan program in Wolman v. Walter, supra.

The legislation behind Chapter 637, L.D. 1946, appears to have been designed to authorize support for those textbooks and services which were allowable by Supreme Court decisions. As Meek v. Pittenger, supra, as affirmed by Wolman v. Walter, supra, appears to have allowed purchase and loan programs which extended not only to textbooks actually used in public schools but also in textbooks acceptable for use in public schools, we believe that 30 M.R.S.A. § 5104.6 may likewise be reasonably interpreted to permit purchase and loan of those secular textbooks which the

* The governing body has the discretion to decide whether textbooks which are not already approved for use in the school administrative unit shall be considered for such approval.

appropriate school committee or board of directors finds acceptable for use in the public schools, regardless of whether such books are actually in use in the public schools.

As a practical matter, we would note that if the stricter interpretation were applied, full implementation of the law, as intended by the Legislature, might be difficult. In some school systems it is possible that the only books currently in use might be editions of books in such areas as history which are currently out of print. Implementation of the loan program therefore might be frustrated unless and until the public school were able to replace their books actually in use with up-to-date editions or new texts. That might be an unreasonable and unnecessary burden for the public schools to face if they desired to implement the program.

Subsections 7 and 8 of § 5104 are services which the municipality is authorized to provide. There is no affirmative obligation on the part of the governing board of the school administrative unit to provide these services. It is expected, though, that a governing board would cooperate with the appropriate municipal officials in the delivery of these services since the services may not be made available "to non-public school pupils. . . unless those services are available to pupils attending the public schools serving the municipality." 30 M.R.S.A. § 5104.

2. The municipality in which the non-public school student resides is the governmental body responsible for the funding of the secular services authorized under P.L. 1977, c. 637. 30 M.R.S.A. § 5104, sub-§§ 6, 7 and 8, authorizes but does not require the municipality to raise or appropriate the money for these services. It does not authorize the cost of the services to be included as part of the school budget. Under the School Finance Act of 1978, 20 M.R.S.A. § 4750, sub-§ 6, the Commissioner is authorized to reimburse the municipalities for 50% of the expenditures for non-public* student services. It is the municipal officers and not the governing boards of the administrative units which report the expenditures for these services to the Commissioner.

3. Any pupil residing within a municipality who attends a non-public* elementary or secondary school is eligible for the loan of the secular textbooks which are authorized to be loaned under 30 M.R.S.A. § 5104, sub-§ 6. There is no requirement that

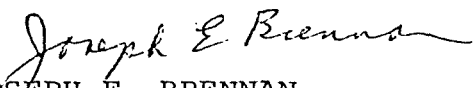
*NOTE: Pursuant to 20 M.R.S.A. § 4750.6, as enacted by P.L. 1977, c. 625, § 8, the municipalities shall only be eligible for State reimbursement if the students attend a non-public and a non-profit elementary or secondary school. 30 M.R.S.A. § 5104.6, 7, and 8 do not contain the non-profit limitation; if the municipality provides authorized services to students who attend a school operated for profit, then the municipality would not be eligible for State reimbursement for such expenses.

the student be attending a non-public school within the confines of that municipality or within the borders of the State of Maine. However, the services authorized under 30 M.R.S.A. § 5104, sub-§§ 7 and 8 are limited to students attending non-public elementary and secondary schools within the given school district or municipality. It is my opinion that if the municipality is a member of a school district, then pupils attending the non-public elementary and secondary schools located within the geographic borders of that school district shall be eligible for these services.

4. The municipality in which the non-public student resides is the governmental entity which is responsible, at its discretion, for delivering the services authorized under P.L. 1977, c. 637, and is the owner of any textbooks loaned to the non-public school students.

If you have further questions regarding this matter, please feel free to contact me.

Sincerely yours,


JOSEPH E. BRENNAN
Attorney General

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