

MAINE STATE LEGISLATURE

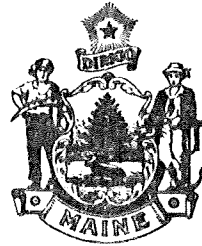
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JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

February 16, 1982

George J. Rainville
State Auditor
Department of Audit
State Office Building
Augusta, Maine 04333

Dear Mr. Rainville:

I am writing to respond to the questions you raised regarding the audit of the Tribal School Committees' records.

The facts, as we understand them, are as follows: the Department of Audit instituted an audit of the Tribal School Committees' records, for fiscal year 1979-1980, relating to general fund appropriations for education. The auditors spent five days reviewing these records, but they were unable to conclude the audit because the financial records were incomplete. The audit cannot be concluded until these records are "reconstructed," a lengthy process we are told. The Indian School Committees have expressed a willingness to hire a private auditor to complete the audit. You have asked whether the Tribal School Committees have legal authority to hire a private auditor to audit a general fund account. You have also asked whether such an audit would satisfy the requirements of 5 M.R.S.A. § 243(8) - a provision directing the Department of Audit to audit the accounts of entities receiving appropriations from the State.

State law confers broad powers on school committees with respect to school management.^{1/} Section 5 of Title 20 provides:

It is the intent of the Legislature that the control and management of the public schools shall be vested in the legislative and governing bodies of the several school administrative units, so long as those units are in compliance with appropriate state statutes.

These powers are restated at 20 M.R.S.A. § 473(1):

Superintending school committees and school directors shall perform the following duties:

1. Management of Schools. The management of the schools and the custody and care, including repairs and insurance on school buildings, or all school property in their administrative unit. . . .

These statutes vest in school committees general authority to manage and exercise control over the financial and educational affairs of schools. This authority encompasses responsibility for the determination and execution of school policy, including policy decisions with respect to labor relations, hiring of executive personnel, determination of capital expenses and supervision and vigilance for the welfare of the schools. The duties of the committees are sufficiently sweeping that they must necessarily have considerable discretion in discharging them.

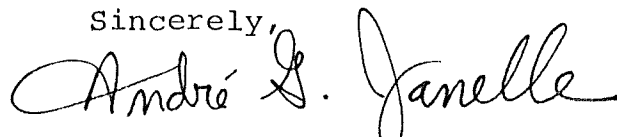
Given these broad powers and responsibilities, we believe that it is proper for a school committee to employ a private auditor to audit school financial records. The maintenance of accurate financial records is a prudent and necessary procedure for any entity that receives public funds, as do the Tribal School Committees. We know of no "business" reason nor any statute which would bar the Tribal School Committees from taking reasonable measures to put their financial records in order.

^{1/} Tribal school committees are specifically directed to operate under the laws of the State applicable to school administrative units. See 30 M.R.S.A. § 6214.

Although the Tribal School Committees may hire a private auditor to complete the audit in question, the State Auditor and his staff are charged, nonetheless, with a legal duty to audit "all accounts and financial records of any . . . entity receiving or requesting an appropriation or grant from State Government and to issue reports on such audits" when necessary. 5 M.R.S.A. § 243(8).^{2/} This duty, imposed solely on the State Auditor and his staff, is not delegable to a local or Tribal school committee.^{3/} We see no reason, however, why the State Auditor, in performing his statutory duty, may not rely on all or part of the private audit to the extent he deems appropriate. In other words, the State Auditor is not required to duplicate those aspects of the private audit which he believes have been satisfactorily carried out; rather, he may adopt those findings as his own.

I hope this is of help to you. If we can be of further assistance, please call on us.

Sincerely,



ANDRE G. JANELLE
Assistant Attorney General

AGJ/ec

2/ We note that the former 22 M.R.S.A. § 4719 (repealed, effective December 12, 1980, by P.L. 1979, c. 732, § 16) provided: "The accounts [of the Tribal School Committees] shall be audited by the State Auditor." Notwithstanding the repeal of this statute, the duty to perform the audit continues to exist under 5 M.R.S.A. § 243(8).

3/ Compare 30 M.R.S.A. § 5253 authorizing municipalities to hire a private auditor in lieu of the State Auditor.