Judicial decisions affecting the administration of the public school system in Maine.

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JUDICIAL DECISIONS AFFECTING THE ADMINISTRATION OF THE PUBLIC SCHOOL SYSTEM IN MAINE

A Dissertation Presented
By
Merrill Evan Cobb

Submitted to the Graduate School of the University of Massachusetts in partial fulfillment of the requirements for the degree of DOCTOR OF EDUCATION
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Major Subject Educational Administration
JUDICIAL DECISIONS AFFECTING THE ADMINISTRATION OF THE PUBLIC SCHOOL SYSTEM IN MAINE

A Dissertation

By

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CHAPTER I

INTRODUCTION

Statement of problem. The problem of this study is to identify, analyze, and summarize all existing decisions of the Maine Supreme Judicial Court, which govern in part, the administration of the public school system in the State of Maine. The jungle of statutes relating to education with which school administrators, school committees, teachers and other school personnel must be familiar and by which they are governed, represents the mere skeleton of the law. The interpretation of these statutes by the courts is what adds the real meat to the body of school law. It is the judicial interpretation of the statutes by the courts and their opinions of the original intent of the legislature in enacting the statutes that is of real significance to school officials and provides the guidelines under which they must make administrative decisions in the day-to-day operation of the public schools.

In the absence of litigation on a particular point, opinions are often sought from the Attorney General's office. While not binding on the courts, or carrying the weight and effect of a court decision, these opinions are helpful to the school official in providing additional guidelines on how the courts would probably rule should the question be litigated.
Consequently, all opinions of Attorneys General relating to education in the State of Maine will be included.

Need and significance of study. The need for studies pertaining to legal aspects of educational administration is generally recognized by educators. Until statutory enactments have been given judicial interpretation, laymen can never be certain as to the meaning of the law. Furthermore, principles of law are established by court decisions where statutes are silent. Ruling principles concerning public education resulting from court decisions should be known to those who work in the schools. A systematic arrangement of the ruling legal principles, as established by the Maine courts, should provide an additional tool to assist those who serve public education in the state.

Edwards believes that those persons responsible for the formulation of educational policy should understand the position of the schools in legal theory. Those who assist in the work of the schools--school boards, superintendents, and school principals--need to understand the legal principles governing their actions. Thus, he points out:

The relation of the school to civil society, on the one hand, and to the individual, on the other, is nowhere so well defined as in the great body of decisions rendered by the highest of our state and federal courts. It would seem obvious that both the educational statesman and the practical school administrator should be familiar with the fundamental principles of law governing the operation of our system of public education.1

Bolmeier expresses a similar need for an understanding of the legal aspects of school administration. His opinion is that an interest in school law is on the increase because school board members, superintendents, supervisors, principals and teachers need to know our legal machinery as it operates in the control of public education. Specifically, he says that they must have an understanding of the legal principles emanating from court decisions; they should be aware of the legal framework of public school control; they must be in a position to apply legal principles for the school and community welfare.  

The only way such knowledge may be acquired is by an exhaustive study of court decisions as found in law libraries. For the layman, such a procedure would be difficult, if not impossible.

The need for such a study in Maine is evident from the fact that no similar or related study has ever been undertaken. Other than a periodic compilation of the school laws of the state and a partial summary of opinions from the Attorney General's office, no publications dealing with the legal aspects of the operation of Maine's schools exist.

That court decisions are affecting the operation and

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administration of the public schools of Maine and, indeed, of all of our states is becoming increasingly apparent. Both the number of such decisions and the multiplicity of the subjects with which they deal have increased within recent years. New statutes relating to education are being added at an increasing rate to cope with the major problems of our time including school district reorganization, finance, school construction, church-state relationships, liability, collective bargaining for teachers and many others.

The purpose of this study, therefore, is to identify, analyze and summarize all existing decisions of the Maine Supreme Judicial Court relating to public school education. In the absence of court rulings on important legal principles, opinions from the office of the Attorney General are included where available. Leading court decisions from other state jurisdictions are cited if they deal with vital questions which have not as yet come before the courts of this state. Rulings of the United States Supreme Court which negate existing Maine statutes or otherwise affect educational policy within the state are also included.

The completed project should provide, under one cover, a useable reference to Maine School law which can be revised and updated in future years as new statutes and court decisions supersede the existing ones. It is also hoped that this study might be helpful in identifying areas where legislative reform is needed.
Delimitation. This study will be limited in scope to public elementary and secondary education. It will be further limited to a survey of decisions rendered by the Maine Supreme Judicial Court, although decisions of courts of a lesser jurisdiction may be referred to if within them are embodied important legal principles which have not been ruled on by the Maine Supreme Judicial Court. Where court decisions apply to statutes or to sections of the constitution no longer applicable, because of changes in the law or because of amendments to the constitution, such decisions generally will not be a part of this study.

An analysis and evaluation of the Maine statutes on education currently in effect are not a part of this study. Observations pertaining to the organization of the statutes and outdated or ambiguous language will, however, be included in the summary chapter.

Related studies. Although many studies have been made dealing with various legal aspects of education, only a very few have given their major emphasis to a consideration of the influence of court decisions in the formulation of educational policy. Among this latter group, a major contribution in the field of legal research was the study of Newton Edwards, author of the textbook, The Courts and the Public Schools. In his study, Edwards stated that his purpose was to accomplish two things:

(1) to make clear the fundamental principles underlying the relation of the state to education; (2) to reduce to systematic organization the principles of the case or
common law which are applicable to practical problems of school organization and administration.4

Lee O. Garber has been another significant contributor to the field of school law. His school law yearbooks5 have provided an up-to-date review of court rulings of significance to education, covering all of the states. A recent publication by Drury and Ray, Principles of School Law,6 presents many of the more important principles of school law and many leading court cases.

A number of studies have been made based upon court rulings of selected states. Stephenson7 conducted a study of court decisions in Indiana in 1929, for the stated purpose of establishing principles of school law for teachers and laymen. A similar study by Campbell8 was made for the State of Kentucky in 1937, for the purpose of determining the extent to which principles of public school administration had been shaped by the courts.

The primary related studies which the author has used

are Johnston's "Judicial Decisions Affecting the Administration of the Public School System in Pennsylvania,"9 and Earl Lightcap's "Judicial Decisions Affecting the Administration of the Public School System in Maryland."10 These dissertations have been followed closely in format and organization although the content chapters will vary. Johnston, for example, omitted chapters on pupils and teachers, since these areas had been treated in other research studies. Lightcap did not include a chapter on school district reorganization.

**Method of procedure.** The procedure used in the solution of the problem is known as the case or common-law method. The writer has followed, in general, the approach used by Edwards and Garber in their discovery and organization of principles of law by the study of court decisions. The sources for the data have been the decisions of the Maine Supreme Judicial Court as found in the Maine Reports, Attorneys General opinions and miscellaneous policy statements and by-laws of the Maine State Department of Education.

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CHAPTER II
THE STATE AND PUBLIC EDUCATION

Introduction

The responsibility of providing for the education of youth is a governmental one. All civilized countries provide a systematic, formalized procedure for educating their citizens, particularly children. The responsibility for this vital function is vested with the highest level of government to be found in the country or with some political subdivision of government, depending upon the form of government.

It is important that school personnel have a clear understanding of the division of responsibilities with respect to education in this country. It is the purpose of this chapter, therefore, to delineate these responsibilities as they are legally constituted at the national, state and local levels.

The Federal Government and Education

The Constitution of the United States makes no specific mention of education. Any power over education which the federal government has is, therefore, an implied power. The only clause in the constitution from which power with respect to education can be implied is the general welfare clause. This clause confers upon Congress the power "to lay and collect
Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the Common Defence and General Welfare of the United States.\(^1\)

From the very start, the interpretation of this clause has given rise to conflicting views. The opposing points of view, first enunciated by Madison and Hamilton, have been widely reported and need not here be repeated. The power to tax and spend under the general welfare clause was finally established by the Supreme Court during the depression years preceding World War II. In *United States v. Butler*\(^2\) and in *Helvering v. Davis*\(^3\) the Court sustained the use of proceeds of taxation for particular purposes (Agricultural Adjustment Act and Social Security Act) as an exercise of authority under the general welfare clause.

While no case involving the power of Congress to tax and spend in support of education appears to be on record, there is little doubt that Congress under the general welfare clause would be accorded authority to make any reasonable appropriation for the support of education if challenged.

While Congress cannot use its taxing and spending power to purchase control of some matter reserved to the states, it may use this power to induce the states to cooperate with the national government in meeting some social need that is nation-wide in scope. Certainly education is a matter of national

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\(^2\)United States v. Butler, 297 U.S. 1, 56 S. Ct., 312 (1936).

\(^3\)Helvering v. Davis, 301 U.S. 619, 57 S. Ct. 904 (1937).
concern. It would seem, therefore, that the national government in sponsoring a host of federally supported programs for public school education is not invading the reserved powers of the states by employing its taxing and spending power to collaborate with the states in the promotion of education.

It would seem that the Tenth Amendment, passed in 1791, was intended to reserve to the states matters of education, among other things. The Amendment states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." Nevertheless, there are limitations provided by the United States Constitution which are applied to public education in various states and, in some cases, to all states. One such limitation is the clause which prohibits any state from passing legislation impairing the obligation of contracts. In the case of Trustees of Dartmouth College v. Woodward, the Supreme Court held that a college charter is a contract between the state and the college and cannot later be changed. Of more interest to school personnel is a related decision in which the Supreme Court held that an act of a state legislature providing for teacher tenure was so worded as to constitute a contract.

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4 U.S., Constitution, Amendment X.
A second limitation upon the power of the states is found in the First Amendment. It reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."\(^7\) The Supreme Court has held that the clause of the Fourteenth Amendment providing that "No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States" makes the First Amendment applicable to all states.\(^8\) The Supreme Court has interpreted this amendment as establishing a "wall of separation" between church and state. Specifically, it has been interpreted as a denial of authority of either the national government or the government of any state to appropriate and spend moneys raised by taxation in support of sectarian instruction. As was said in *Illinois ex rel. McCollum v. Board of Education*,\(^9\) "No tax in any amount, large or small, can be levied to support any religious activities, or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion."

The First Amendment also goes very far in protecting the right of the individual to be free from official censorship or control in the realm of intellect or spirit. Thus, in a

\(^7\)U.S., Constitution, Amendment I.


far-reaching decision, the Supreme Court has held as unconstitu-
tional a state law making it compulsory for children in the public
schools to salute and pledge allegiance to the flag of the
United States. 10

Another limitation upon the powers of the states is con-
tained in the clause of the Fourteenth Amendment which provides
that no state may "deny to any person within its jurisdiction
the equal protection of the laws." This means that no state
may enforce legislation which discriminates in favor of one
class of citizens over another. In the historic 1954 decisions
of the Supreme Court it was ruled that racial discrimination in
the public schools is unconstitutional. 11 While public education
is considered a state function, state legislators must exercise
their responsibilities in such a manner as to be consistent with
the provisions of both state and federal constitutional pro-
visions.

Education as a State Function

As pointed out earlier in this chapter, the effect of
the Tenth Amendment was to reserve to the states, matters per-
taining to education. The courts have consistently upheld this

10 Board of Education of West Virginia v. Barnette,
319 U.S. 624, 63 S. Ct. 1178 (1943).

686, 98 L. Ed. 873 (1954); Brown v. Board of Education, 349
doctrine. In *State ex rel. Clark v. Haworth*, it was held that education is a function of the state government. Furthermore, it has been held by the courts that the state legislature has plenary control over educational matters within the state, subject to whatever constitutional provisions may affect the exercise of legislative authority.

Article VIII of the Maine Constitution adopted in 1820, places the responsibility squarely on the legislature for providing for public schools in the several towns. The Article reads as follows:

A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people, to promote this important object, the legislature are authorized and it shall be their duty to require the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools; and it shall further be their duty to encourage and suitably endow, from time to time, as the circumstances of the people may authorize, all academies, colleges, and seminaries of learning within the state; provided, that no donation, grant, or endowment shall at any time be made by the legislature to any literary institution now established, or which may hereafter be established, unless at the time of making such endowment, the legislature of the State shall have the right to grant any further powers to alter, limit or restrain any of the powers vested in, any such literary institution, as shall be judged necessary to promote the best interest thereof.

This Article has been challenged from time to time by local municipalities but the Maine Supreme Judicial Court has consistently upheld the premise that education is basically a


14Maine, Constitution, Art. VIII.
state function and that the legislature, under Article VIII, has the authority to pass legislation to ensure compliance with the intent of the Constitution. In an 1878 decision, the Court stated that the law of 1872, establishing a school mill fund, was authorized by Article VIII of the Constitution, empowering the legislature to make "suitable provisions" for the support of public schools, and a general tax on the property of the state could be imposed therefor.

A 1912 decision declared that Article VIII is mandatory, and not prohibitory and that the word "suitable" is an elastic term depending upon the times and subject to the legislature's discretion in determining what is suitable. In the Squires case of 1959, the Court stated that:

The state educational policy cannot and must not be interfered with by any subordinate governing body. In enacting the laws pertaining to education, the legislature intended that no municipality should regulate by ordinance or order any subjects which would affect or influence general education unless permitted to do so by an express delegation of power. . . . [T]he constitutional provision imposing the duty upon the legislature to promote the cause of education in effect, is in the nature of a constitutional mandate. 17

Finally, in the McGary case of 1960, the Court held that: "Under constitutional provisions stating that it is the

15 Opinion of Justices, 68 Me. 582 (1878).
17 Squires v. Inhabitants of City of Augusta, 155 Me. 151, 153 A. 2d 80 (1959).
duty of the legislature to require towns to make suitable provision at their own expense for the support and maintenance of public schools, the responsibility rests with the legislature."

Evidence of the desire on the part of the state to take an active role in the control of educational affairs occurred as early as 1825. At that time, an act was passed that required the selectmen of the several towns and the assessors of the several plantations to make a return to the Secretary of State showing the number of school districts within their respective towns and plantations, the number of children in each district, and the amount of money raised and expended for the support of schools. 19 Although the returns secured under these laws were of little value, the statute was of great importance since it marked the beginning of the supervision of the state over its schools.

In 1835 a new agency of state control appeared in the form of a Board of School Commissioners, the first instance of the appointment of special school officers in the state. This was brought about by a resolve introduced and passed during the legislative session of that year. 20 No evidence is to be found that this board ever existed (the resolve was repealed in 1836) but the attempt of the legislature to establish some sort of agency of control at the state level was significant. Ten years

19 Maine, Public Laws (1825), c. 111, sec. 5.
20 Maine, Resolves (1835), c. 73.
later, in 1846, a committee appointed at the first meeting of "teachers and friends of education" held at Augusta, presented a memorial to the legislature which strongly recommended the establishment of a State Board of Education as a means of correcting the evils in the school system. The committee on education and the governor supported the measure. The result was that "An Act to Establish a Board of Education" was enacted by the legislature and approved by the governor on July 27, 1846. The elected board was:

... [A]uthorized and required to collect and disseminate information in regard to the location and construction of school houses; on the arrangement of school districts and the use of the best school apparatus; to consult with superintending school committees and school agents on the best and cheapest method of introducing uniform school books and on the practicability and expediency of establishing school district libraries; to inquire and report upon the advantages of normal schools or schools for the education of teachers; to consider the best method in aiding and promoting education in the new settlements of the State; to devise improvements in teaching the branches of instruction now pursued in the common schools and for the introduction of such other branches of useful knowledge as may then be practicable.  

It might be supposed that with the establishment of the Board of Education accomplished, with the work of its members and its secretary presenting more and more information to the people, and with the importance of state supervision in some measure duly recognized, this agency of state control would meet with general favor. But the politicians, being unable to control the elections of the members of the Board, did not favor

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21 Maine, Public Laws (1846), c. 195.
this form of administration. The result was that, in 1852, the State Board of Education was abolished. The same legislation which abolished this form of state control established another type of supervision by providing for County Commissioners of Education. 22 Under this system, each county had a Commissioner of Common Schools whose duties were as follows:

It shall be the duty of each school Commissioner to spend at least fifty days (during the term of the winter school) in visiting the towns in his county, for the purpose of promoting by addresses, inquiries and other means, the cause of common school education, and annually to make a report to the Legislature of his doings under the act, of the character of the teachers, and of the order and condition of the schools and schoolhouses in his county, together, with all such other information and suggestions as his experience and observations may enable him to offer, calculated to advance the cause of popular education. 23

Few records remain of the work of this commission and its existence was for a brief period of two years. It is evident that the Board of County Commissioners of Education did not meet the educational needs of the state; nor did it receive popular approval. This is shown by the fact that the legislature in 1854 repealed the act creating that commission and in its place enacted a law establishing the office of State Superintendent of Common Schools. This law, with some changes and amendments, is in effect at the present time. No more important or enduring educational legislation has ever been enacted in Maine. From this date, the people of Maine

22 Maine, Public Laws (1851), c. 357, sec. 1.
23 Ibid.
ceased to experiment with the different forms of state control and devoted their efforts to the expansion of the office. Because of the significance of the legislation, it is here quoted in full.

There shall be appointed by the Governor and Council a Superintendent of Common Schools who shall be duly sworn and whose term of office shall continue for three years from the first day of May next, and on the expiration of said term or the occurrence of a vacancy in said office by death, resignation or removal, a new appointment shall be made for a like term of three years.

He shall devote his time to the improvement of common schools and the promotion of the general interests of education. He shall investigate the operation of school laws and collect information in regard to the arrangement of school districts. He shall familiarize himself with the location and construction of schoolhouses and the use of the best school apparatus. He shall consult and advise with the Superintending School Committees on the selection of textbooks adapted to the wants of the schools and in methods of ascertaining the qualifications of teachers for their duties.

He shall examine the returns made by the Superintending School Committees to the office of the Secretary of State and obtain from them such facts and statistics as may be useful, and in general procure information from every available source for the improvement of common schools.

It shall be the duty of the Superintendent by correspondence with teachers, school officers and others, and by public addresses from time to time in different parts of the state, to disseminate the information he may have acquired and endeavor to awaken a more general interest in public education.

The Superintendent shall annually, prior to the session of the Legislature, make a report to the Governor and Council of the results of his inquiries and investigations, and the facts obtained from the school returns including such suggestions and recommendations as in his judgment will best promote the improvement of common schools.24

It is noteworthy that most, if not all, of the original duties imposed upon the Board of Education were assigned to the

24 Maine, Public Laws (1854), c. 89, sec. 11.
new Chief State School Officer. Commensurate with the wider scope of influence of the office, the title of the Chief State School Officer was changed in 1923 to "State Commissioner of Education." 25

Today, the duties and powers of the State Commissioner of Education are definitely prescribed and backed with such specific methods of enforcement that the office carries a great deal of authority and responsibility. A partial list of his duties as prescribed by law follows:

"1. To exercise a general supervision of all the public schools and to advise and direct the town committees and superintendents in the discharge of their duties;

"2. To compile and distribute, in pamphlet form, to the municipal and school officers of the several towns, copies of the amended school laws of the State;

"3. To prescribe the studies to be taught in the public schools . . . and approve any course arranged by the superintending school committee;

"4. To cause an inspection to be made under the direction of the board and to report to the school committee and to the board, his findings and recommendations when petitioned by 60% of the parents of the children of any one school;

"5. To supervise the state colleges;

"6. To appoint supervisors whose duty it shall be to assist and direct elementary and secondary teachers. . . ." 26

The office of chief state school officer was strengthened in 1909 when the State Superintendent was authorized to employ a deputy and an inspector of secondary schools. 27 Further

25Maine, Public Laws (1923), c. 5.
27Maine, Public Laws (1909), c. 125.
authority was granted in 1911 when the State Superintendent was authorized to employ a general agent for the purpose of administration and supervision of schools in unorganized territory. At this time, nearly one-half of the total area of the state was classified as unorganized territory. In 1916, the office was further augmented by the addition of two specialists in the field of rural education. The State Department has continued to grow and expand its services through the years. The most recent state directory lists 69 professional and/or technical positions in the State Department of Education.

Maine, like most states, has a state agency known as the State Department of Education. This agency includes a State Board of Education of ten members appointed by the Governor, with the consent of the Governor's Council, for five-year terms; a Commissioner of Education appointed by the Board; and a staff of professional, technical and clerical personnel appointed by the Commissioner.

Since education is a state function, the courts have held consistently over the years that the legislature may empower the State Department of Education to supervise the state system of education. This means, in the ultimate, that if a local administrative unit fails to provide a program of education which meets minimum requirements, the State Department

28 Maine, Public Laws (1911), c. 127.
of Education may take any reasonable steps to cause such a program to be provided, including withholding of state subsidies or failure to accredit schools.

Included in this broad authority are certain specific responsibilities such as certification of teachers, approval of building plans and general responsibilities which include professional assistance and supervisory services. While many additional responsibilities have been added in recent years, especially since the advent of federally supported programs, there appears to be sufficient constitutional and statutory authority to permit such expansion.

As a policy-making body, the State Board of Education has the authority to adopt bylaws which have the equal force and effect of statutes. The exercise of this vital power has not been tested in the state's highest tribunal. It has been held in other jurisdictions, however, that bylaws having been formally adopted by the State Board of Education have the force of law. Existing policy statements and bylaws of the Maine State Board of Education have been reviewed and are included where applicable as part of this study due to their important implications for the administration of the public school system.

Local Control of Education

A review of material pertaining to the history of the

30 Board of School Commissioner v. Manning, 123 Md. 169, 90 A. 839 (1914).
Province of Maine reveals no records of any schools prior to the time when this Province was united with the Massachusetts Bay and Plymouth Colonies under the Charter of William and Mary in 1692.\textsuperscript{31}

As early as 1652, the Massachusetts Bay Colony contended that, according to the provisions of its charter, since it embraced all lands "... within the space of three English miles, to the northward of the River Merrimack and to the northward of any and every part thereof . . .," the Province of Maine belonged to its jurisdiction. From that date, Massachusetts attempted to enforce its laws upon the inhabitants of that section.

Among these statutes were the famous school laws enacted in 1642 and 1647 requiring the education of all children and the establishment of schools in towns of 50 and 100 families.\textsuperscript{32} There is little evidence that the residents of the Province of Maine took these laws seriously during the seventeenth century. During the eighteenth century, under the settled government and the better conditions in the Province of Maine brought about by the Charter of William and Mary, towns began to establish schools. This was especially true of those towns which were located in the southwestern section of the Province and which had been among the first to submit to the


jurisdiction of Massachusetts.

The records of the early schools in Massachusetts Bay Colony show that the three forms of local control—the town meeting, selectmen, and school committee—had been used consecutively as means of controlling education. In Maine, although the above sequence may be traced in some towns, for the most part each town chose the form which seemed to meet its need or was most familiar to the inhabitants who had come from Massachusetts towns.

Following the practice of the Massachusetts Bay Colony, the people of the Province of Maine began gradually to change the method of management of their school affairs, giving more extensive power to a special group or committee. The use of special committees to meet some situations of unusual importance or one requiring detailed attention represented the groping for a new means of control. It was this idea, born of necessity, which later gave rise to the conviction that education, being one of the proper functions of government, is of such nature that its interest can best be served by holding its direction apart from other municipal affairs. It is evident from the records that the purpose of this general committee at first was to assume the duties which had hitherto belonged to the town meeting or selectmen. They were to agree with the school master concerning wages, to determine the location of the schools and to set the duration of the school terms. Later, in addition to the above duties,
the committee was empowered to examine the teachers in regard to their ability to teach and to test the quality of their work by due inspection of the schools.

Every governmental function of the state and of its political subdivisions has its origin in the state constitution. Under the constitution, the state, through its legislature, may authorize its cities, towns, and plantations to assume certain duties and obligations not repugnant to the general law.

The needs of the people make it necessary for a state to delegate much of its authority under the constitution to one of its several divisions in order that the common good be served. This delegation of power in the field of education was extended to the towns of Maine in 1821. In compliance with Article VIII of the Constitution which directs the legislature to "... require the several towns to make suitable provision, at their own expense, for support and maintenance of public schools..." a statute was passed in 1821 creating school districts and establishing them as the legal unit of education in Maine.33 This legislation gave authority to each town and plantation to determine the number and limits of school districts. These divisions or sections were thereby made bodies corporate with power to sue and be sued, to take and to hold any estate, real or personal, for the purpose of

33 Maine, Public Laws (1821), c. 117, sec. 8.
supporting the school or schools and to apply the same agreeably to the provisions of the Act independently of the money raised by the town for that purpose. In addition the inhabitants of any school district qualified to vote in town affairs were empowered to raise money for the purpose of erecting, repairing, purchasing or removing a schoolhouse and for the purpose of purchasing land for the same and equipment therefor. They were also authorized to determine the location of the schoolhouse and the age at which pupils might be admitted to the schools.

As a means of control under this district system of schools, the law of 1821 stipulated that each town and plantation at its annual meeting should choose a superintending school committee of not less than three nor more than seven persons. The duties of this committee were expressly provided for in the statute. They were to examine the school masters and mistresses who proposed to teach school within the town or plantation, and it was further provided that they be empowered to dismiss any school master or mistress who should be found incapable or unfit to teach, regardless of the fact that the teacher might have been properly certified. They were to visit and inspect the schools and inquire concerning the regulations and discipline in effect in each school and also give heed to the proficiency of the pupils. It was also the duty of the committee to use its influence and best endeavors to the end that the youth of the several districts attend the schools regularly, and it was authorized to direct
and select school books to be used in the respective schools.

This act further provided that at the same or annual town meeting, a second official, a school agent, be chosen for each school district to share with the committee in the control of the schools. The agent's duties as stated were "to hire the school masters and mistresses and to provide the necessary fuel and utensils for the schools."

The statute of 1821 laid the legal basis of Maine's public school system and from it all the subsequent educational legislation has had its inception.

The structure of a public school system as expressed in the Massachusetts Law of 1789 was duplicated closely in the Maine Law of 1821. The practices followed in the control of schools and legalized by the enactment were basically no different from those formerly followed in Maine when it was a part of Massachusetts. Committee control, which had been legalized by the Law of 1789, was simply augmented by the addition of a district agent, a practice which had begun in a few towns in the Province of Maine in the first part of the nineteenth century.

The joint plan of control under the new statute of 1821 by committee and district agent resulted in a division of authority. This division is evident in regard to teachers. It was the duty of the committee to examine the teacher as to his ability to teach; but since the appointment of the teacher was the responsibility of the district agent, the committee
could not demand that any particular qualified candidate be employed. Such division of authority resulted in continual difficulty, the district agent often usurping the rights of the town committee in an autocratic fashion.

A very early court case, now of historical interest only, confirms this weakness in the original legislation. In Moor v. Newfield\textsuperscript{34} plaintiff Moor was employed to teach in District No. 2 in the Town of Newfield for the month of April, 1824, at the agreed upon salary of fifteen dollars. He was hired by one of the three elected school committee representatives of the district. Upon completion of his assignment he sought to recover his wages but the Town of Newfield refused to pay on the grounds that he had been illegally employed. Judge Mellen, in holding for the defendant, ruled that a school committee of three, elected by a district, had no authority to hire a school master; the power was vested in the school agent.

It is interesting to note that although the district system was the intended plan for the entire state under which schools were to be conducted, it did not meet with universal favor and, as a result, the legislative session of 1822 exempted the Town of Portland and placed the control of all schools in that town under one general school committee.\textsuperscript{35}

\textsuperscript{34}Moor v. Newfield, 4 Me. 44 (1826).
\textsuperscript{35}Maine, Public Laws (1822), c. 116, sec. 1.
In 1828, Bath followed the action of Portland and secured from the legislature the right to elect a superintending school committee which was to have full control of all public schools within the town.  

These trends in school legislation point to the desire on the part of the people, in a few of the larger communities, to place the control and supervision of all schools in the hands of a local committee at large. This feeling increased with the passing years and finally reached fruition in 1893 in the abolition of the district system.

One wonders how the district system, with all its obvious defects could exist for such an extended period of time. Perhaps the reason for this reluctance to change is best expressed by Coe, who stated:

The old district system probably held on so long because the early New Englanders were suspicious of centralized government in either Church or State. The school district was an example of extreme local self-government. In fact it was so local in character that the results were often backwardness in teaching methods and ability and improper location of schools, and it was not until 1893 that fear of centralized government was sufficiently dispelled to permit abolition of the district system.

A new policy in the local control of schools appeared in an 1850 enactment which provided that any town containing two thousand inhabitants or more might, if it wished, elect some "competent individual, an inhabitant of the town" who

36 Maine, Public Laws (1828), c. 475, sec. 1.

should be constituted a supervisor of the public schools of the town. This supervisor of schools, when elected, was clothed with all the authority, privileges, and duties of the superintending school committee in place of which he had been elected.\textsuperscript{38} This statute was the first concerning a local supervisor or superintendent of schools that can be found in the history of the control of the public schools of the state. The legislation was permissive rather than mandatory. In 1895, the act was amended and thereafter it was the duty of the school committee to elect a superintendent of schools.\textsuperscript{39}

Local control of schools was enhanced again in 1897. The legislature, not without violent protest, enacted a union supervision law. The law provided that two or more towns, having not less than twenty-five nor more than fifty schools,\textsuperscript{40} might unite in the employment of a superintendent of schools. The school committees of the towns of a supervisory union were empowered to unite to form a joint committee for the purpose of electing a union superintendent, to fix and apportion his salary among the several towns, and to determine the relative amount of service to be performed by the superintendent in each town.\textsuperscript{41}

\textsuperscript{38}Maine, \textit{Public Laws} (1850), c. 193, sec. 2.

\textsuperscript{39}Maine, \textit{Public Laws} (1895), c. 120.

\textsuperscript{40}Since most schools at this time were one-room, one-teacher schools, the terms school and teacher were synonymous within the context of the statute.

\textsuperscript{41}Maine, \textit{Public Laws} (1897), c. 296, sec. 1.
The supervisory union plan, despite several amendments, is still in existence in Maine today. The current statute requires in part that:

... Supervisory unions shall include not less than 35 nor more than 75 teachers unless the commissioner shall find upon representation of any school committee that owing to geographical situation or other reasons it is to the advantage of the State and of said towns that a union shall include fewer than 35 or more than 75 teachers.\(^{42}\)

The latest and by far the most significant legislation affecting the local control of public schools was enacted in 1957. Known as the Sinclair Act, it provides for the formation of school administrative districts of sufficient size to provide a more equalized educational opportunity for all pupils. This Act, and the litigation it has precipitated, will be discussed in detail in Chapter IV of this study.

Judicial Decisions and Education

Under our system of government, there are three branches: the legislative, executive, and judicial. Courts are very zealous in maintaining the principle of separation of powers, and generally will refuse to interfere with the ministerial acts of an administrative agency. Interference by the courts results only when an administrative agency has acted unlawfully, has abused its discretion in acting arbitrarily or in a fraudulent manner or acted without authority.\(^{42}\)

\(^{42}\)Maine, Revised Statutes (1954), c. 7, sec. 2.
Courts also refuse to substitute their judgment for that of the legislature or for boards of education, because with respect to acts of the legislature, it is not the province of the courts to decide the wisdom of the laws, and insofar as school boards are concerned, it is not for the courts to pass upon the wisdom of their acts, nor attempt to operate the public school system.

A great portion of the actual law of the United States has been predicated on court decisions nevertheless. It has been said that the law of the country is not what the state legislatures or Federal Congress may provide but rather it is their action as construed, applied, and interpreted by the courts. As stated in the introductory chapter, laymen can never be certain as to the meaning of the law until statutory enactments have been given judicial interpretation.

It is the primary objective of this study, therefore, to identify, summarize, and interpret the decisions of the Maine Supreme Judicial Court pertaining to education in order to discover the basic intent of the statutes as constructed by the legislature. Decisions of the lower courts are not generally included since, not being courts of record, the information is not usually available.

There are a number of school law questions which have not been adjudicated before the Maine Supreme Judicial Court. Many of these questions have been referred to the Attorney General of the state for his opinion. Consequently, on a large

\[43^3\] Drury, op. cit., p. 329.
number of important legal questions in education, school personnel are guided by interpretations from this office. All such opinions are included where applicable. It should be called to the attention of the reader, however, that as a general rule, while such opinions are considered authoritative as representative of the opinion of the chief law officer of the state, they are not to be construed as pronouncements of the law with the same effect as court decisions.

Summary

This chapter has described the division of responsibilities for public school education at the federal, state and local levels. While the concept that education is a basic responsibility of the state has been well established, the delegation of this authority to the local level started almost from the beginning of Maine's statehood. Beginning with the district system in 1821, the supervisory union system in 1893 and finally the school administrative district system of 1957, the intent of the legislature has been clear in that local matters pertaining to education should be controlled and administered locally.

At the same time, recognizing that a central state agency is also necessary to promote consistency and uniformity in certain matters of state-wide concern, the legislature over the years has provided the necessary machinery for this important function.
From the earliest attempts to develop school supervision at the local level in Maine, school committees, representative of the immediate will of the people, have held a high and important place in the total educational structure. Very few of its prerogatives have been changed or taken away over the years. On the contrary, such prerogatives have generally been expanded. It is a tribute to the good sense of the people of the state that there has never been any serious conflict in law or in practice between the two agencies. Indeed, no court cases involving a dispute between these two arms of government can be found in the decisions of the Maine Supreme Judicial Court.
CHAPTER III

SCHOOL DISTRICT ORGANIZATION AND CONTROL

Introduction

This chapter will consider the legal status of school districts, which are established by the legislature to carry out locally the functions of education, as well as their governing board of officers, known in Maine as school committees or boards of school directors. The legal status of the local chief school officer, the superintendent of schools, will also be explored.

Much of the school litigation in Maine has centered around the authority and power of the original school district organization and the school agent, both of which have long since been replaced by other forms of control. A review of court cases in connection with the district and/or agent generally will not be a part of this chapter since the study is not essentially a historical one. Appropriate references are included for the interested reader.

The series of court cases precipitated by the recent legislation commonly called the Sinclair Act is of such far-reaching importance and concern to present-day school authorities that it will be treated in depth in a separate chapter on school district reorganization.
School Districts

Authority and power. While public education is a state function, legislatures generally establish agencies of the state known as school districts to carry out locally the functions of education under powers expressly or impliedly granted to them by the legislature. A school district is purely the creation of the legislature, with such authority as may be conveyed to it.

School districts have identities separate and apart from private corporations, from municipal corporations, or from other units of government, such as townships or counties, even though the territory of the districts may be co-extensive with other units of government, or lie within territorial limits of other governmental units.

School districts under statutory provisions or judicial decree are generally considered to be corporations or bodies politic. While they are not held to be corporations in the usual sense, they have been considered to be quasi-corporations, or quasi-municipal corporations.

These general legal principles have been confirmed in Maine through a series of judicial opinions dating back to 1843. In Whitmore v. Hogan\(^1\) the Court held that the statute of 1824, to provide for the education of youth, made each

\(^1\)Whitmore v. Hogan, 22 Me. (9 Shep.) 564 (1843).
school district a "body corporate." An 1849 decision held that the statute of 1824 made the selectmen, town clerk and treasurer, of every town in the state, a body corporate, and trustee of the ministerial and school funds, with power to convey lands belonging to those funds. It was stated in an 1865 decision that "School districts are quasi-corporations." In the McGary case of 1960, the court held that the legislature has the authority to create quasi-municipal corporations for educational purposes separate and distinct from municipalities. Finally, an Attorney General ruling in 1959 stated that "A school administrative district is a quasi-municipal corporation set up for the limited purpose of providing education for the children of two or more municipalities, therefore, it is an agency of the State."

The concept of education, as a state function, is of extreme importance in governing the relation of the local school district to the local municipal corporation. A school district and a town may comprise exactly the same territory but they are usually distinct legal entities, each with its own peculiar functions to perform. The leading case in Maine on this point is Kelley v. Brunswick. The facts of this case follow. The Town of Brunswick needed a new high school but,
due to existing indebtedness, was constitutionally prohibited from borrowing the necessary funds under the five per centum limit. The town officials sought and were granted, from the Legislature of 1935, a special act creating the Brunswick School District. The essential part of the act reads as follows:

... [T]he inhabitants and territory within the town of Brunswick are hereby created a body politic and corporate under the name of Brunswick School District for the purpose of acquiring property within said town for school purposes; erecting, enlarging, repairing, equipping and maintaining on said property a school building; and for the purpose of maintaining a secondary school, with the right to lease or let said property to said town; all for the benefit of the inhabitants of said town... when the money shall have been repaid, and every indebtedness of the district discharged, the property is to be transferred to the town. The trustees shall then cease to function, the district itself becomes legally defunct, and all of the duties, management, care and maintenance shall revert to the school board of the town of Brunswick.6

Ten individual taxpayers and inhabitants of the town instituted a suit against the district, and its trustees, to test the validity of the act. Their contentions were that:

1. The act did not incorporate a district separate from the town; that the district must depend on the town, not only for pupils but for teachers;

2. The act had no other purpose than to permit accomplishing, indirectly, what, because of the five per centum limit, the town of Brunswick could not do directly;

3. The town was undertaking to purchase a school building and to pay for it on the installment plan; and

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4. Under the act the town would become obligated to raise money by taxation to pay a present debt which it could not lawfully incur.

The Court dismissed the case and declared the act to be valid and the district legal. In writing the opinion, several statements were made which reinforce the doctrine of education as a state function and the separate legal entity of a school district. Excerpts from the opinion follow:

... [T]owns must provide funds for the support of public schools within their limits, but it does not follow that the legislature can do no more for the same general purpose. ... Municipal corporations organized for different purposes may include the same territory, as a city and a county, or a school district. Two authorities cannot exercise power in the same area, over the same subject, at the same time. But the identity of territory, putting one municipal corporation, full or quasi, where another is, is immaterial, if the units are for distinct and different purposes.

A school district is a public agency or trustee established to carry out the policy of the State to educate its youth. The Legislature may change such agencies, and control, and direct what shall be done with school property. When the district is at an end, the town shall, in succession, take the property impressed with the duty of carrying on the trust. The property held by school districts for public use is subject to such disposition in the promotion of the objects for which it is held, as the supreme legislative power may see fit to make. ... School property is public property, the property of the incorporated district and not of the taxpayers residing within it.7

Lest there be any doubt in the minds of the citizens concerning the ultimate authority of the legislature in creating school districts independent of municipal districts, the Court concluded its opinion with the following:

7Ibid.


The courts may not, absent express constitutional limitations, entirely deny the power of the Legislature to create, wholly or partly, in town or city limits, different public corporate bodies, and to make clear that their debts are to be regarded as those of independent corporations. The Maine Legislature, with regard to incorporating corporations purely public, is of virtually unlimited power.\(^8\)

A school district is a quasi-municipal corporation created for the exclusive purpose of carrying into effect locally a state purpose; the city is a municipal corporation created to direct and control local affairs. Since education by its very nature is a state and not essentially a local concern, it is not to be regarded as a municipal function. It follows, therefore, that a town or city has no authority, growing out of its nature as a corporation, to control in any way the policies of the local school system. This rule of strict construction applies to home-rule charters of cities, that is to say charters which make cities self-governing and free from legislative interference with respect to matters of local and internal interest.\(^9\)

In a Bangor case in 1938, an attempt was made by taxpayers to force the city council to submit its general appropriation resolve to the electorate for acceptance or rejection. Among other things, certain items in the budget for the public schools were being questioned. In denying the action, the

\(^8\)Ibid.

court said, in part:

... [T]he legislature defines, in minimum requirement, what amount of money must be raised and expended by a city for common schools; the public school system is of statewide concern and the State at large is equally concerned with the city regarding education.\(^{10}\)

Finally, a case in Augusta settled in 1959, once again reaffirmed the position of the courts in the matter of who has jurisdiction over public education in the state. The city council had appropriated funds for the transportation of private school pupils within the city. This action was challenged by thirteen taxpayers on the grounds that it was unconstitutional to spend public moneys in support of private and secular schools. While the implications of this and other points in the case are more appropriately considered elsewhere in this study, the following excerpt is pertinent to the present discussion. It is as follows:

... In enacting the laws pertaining to education, the legislature intended that no municipality should regulate by ordinance or order any subjects which would affect or influence general education unless permitted to do so by an express delegation of power and, in the absence of express authority from the legislature in the city charter or in a statute, the Augusta city council has no authority under its police power to enact an ordinance providing for the transportation of pupils to or from private schools. ... \(^{11}\) (Italics mine)

Thus, there is little doubt that the authority and power of Maine school districts are those provided by statute

\(^{10}\)Burkett v. Youngs, et al., of the City Council of Bangor, 135 Me. 459 (1938).

\(^{11}\)Squires v. Inhabitants of City of Augusta, 155 Me. 151, 153 A. 2d 80 (1959).
or implied by same. The powers of a school district are subject completely to the control of the legislature, which may increase, abrogate, or modify the authority of a school district.

The basic authority for school districts reads in part as follows:

An administrative unit as referred to in this Title shall include all municipal or quasi-municipal corporations responsible for operating public schools.

Every administrative unit shall raise and expend, annually, for the support of public schools therein, . . . not less than 80¢ for each inhabitant, according to the census by which Representatives to the Legislature were last apportioned, under penalty of forfeiting not less than twice nor more than 4 times the amount of its deficiency. All moneys provided by towns or other administrative units or apportioned by the State for the support of public schools shall be expended for the maintenance of public schools established and controlled by the administrative units by which said moneys are provided. . . .12

Creation, alteration and dissolution. The procedure for organizing school districts, altering the boundaries, or dissolving districts is largely regulated by statutory provisions. The formation or change of school districts is a governmental function and the legislature has full power to create or change school districts at its pleasure, without the request or assent, or even against the will of the affected district, its board of education, or its inhabitants.

In Knapp v. Swift River Valley Community School District,13 it was held that the creation and dissolution of

12Maine, Revised Statutes Annotated (1964), c. 103, sec. 851.
Community school districts is solely within the legislature's power, and a town can withdraw from such a district only in compliance with the statute requiring authorization of such withdrawal by special act of the legislature. In *Blackstone v. Rollins*,\(^{14}\) the court held that the legislature may validate, reconstitute, and establish school districts despite failure of strict compliance with statutory provisions relating to procedure. In the *McGary* case\(^{15}\) cited earlier, it was held that there is no requirement under the state constitution for submission of the question of formation of school administrative districts to popular vote of the municipalities.

Perhaps in no other area of school administration has the local governmental unit so vehemently opposed the doctrine of state control as in that of establishing school districts. The State of Maine has had its day in court on this subject as have other jurisdictions. It is interesting to note, however, that except for the *Kelley* case reviewed earlier, all of the court cases relative to school districts have occurred under the old school district law of 1821, or after the Sinclair Act of 1957. The school union supervisory legislation of 1897 permitting towns to unite for the purposes of employing a superintendent, permissive at first, and made mandatory in 1918, has continued unscathed and unchallenged in the courts.


to the present time. The system has apparently served the needs of Maine very well over the years.

As mentioned in the introduction to this chapter, the Sinclair statutes and judicial interpretations of same are of sufficient import to the future of Maine's public school system to be treated in depth, in a separate chapter on school district reorganization. Earlier court cases involving legislation now repealed or amended will not here be reviewed. The interested reader is referred to the following cases:

Deane v. Washburn, 17 Me. 100 (1840); Smyth v. Titcomb, 31 Me. 272 (1850); Gail v. Chadbourne, 46 Me. 206 (1858); Jackson v. Stearns, 48 Me. 568 (1860); Allen v. Archer, 49 Me. 346 (1861); and School Dist. No. 1 in Gorham v. Deering, 91 Me. 516, 40 A. 541 (1898).

School Committees

The powers and duties conferred by statute upon school districts are exercised by their legally constituted officers. These officers are always members of a board or committee and have no legal standing except when acting as part of such a board. In Maine, these officers are members of groups known as school committees or boards of school directors.

Members of such boards represent the state. They act in the performance of a state function, and they are state officers. School committee members are not municipal officers even though they may have been elected locally or appointed by
the mayor and/or city council.

School committees are agencies of the state, created by it to carry out its educational policies in local communities. They possess no inherent powers nor are any powers conferred upon them by the local community. Whatever authority a school committee may possess is authority which has been delegated to it by the state.16

A school committee is a legal entity and must act as such; action taken by board members acting separately (including the chairman) is not the action of the committee and is without legal force. Rules and regulations adopted by school committees in legally constituted sessions, however, have the binding force of law within the local school district.

The authority of school committees, when acting within statutory and constitutional bounds is very broad in matters pertaining to the local district which they represent. The duties of school committees and school directors are spelled out in Chapter 15, Section 473. A partial list of these duties is as follows:

"1. The management of schools and the custody and care, including repairs and insurance on school buildings, of all property in their administrative units;

"2. Direct the general course of instruction and approve a uniform course of instruction and approve a uniform system of textbooks, and perform such other functions as may be specified by law;

"3. After investigation, due notice of hearing, and hearing thereon, they shall dismiss any teacher, although having the requisite certificate, who proves unfit to teach or whose services they deem unprofitable to the school;

"4. Expel any obstinately disobedient and disorderly scholar, after a proper investigation of his behavior, if found necessary for the peace and usefulness of the school; and restore him on satisfactory evidence of his repentance and amendment;

"5. Determine what description of scholars shall attend each school, classify them and transfer them from school to school where more than one school is kept at the same time."17

Additional duties and responsibilities of school committees appear throughout the statutes on education. Interestingly enough, some of the most important statutory authority of school committees appears in Chapter 7, Section 161 under the powers and duties of superintendents. In this section, it is noted that the school committee must vote to purchase all materials and supplies; approve all vouchers for school expenditures; determine the amount of time spent by the superintendent in supervising each of the schools; approve all nominations for teaching positions; determine salaries and qualifications of teachers; provide for a hearing, when requested, for dismissed teachers, or teachers serving on a continuing contract whose contract has been terminated; and determine when changes in local conditions warrant the elimination of a teaching position.

A recent publication lists the duties and functions of school committees as follows:

17 Maine, Revised Statutes Annotated (1964), c. 15, sec. 473.
school committees in detail for the interested reader.\textsuperscript{18} It is noteworthy that the powers of school committees have rarely been challenged in the Maine courts. Most of the questions which have arisen center around jurisdiction concerning pupils or teachers. These questions are discussed in succeeding chapters of this study.

Miscellaneous questions concerning school committees have arisen over the years relative to: membership; legal meetings; a legal quorum; eligibility for membership; salary of school committee members; records; removal of members; and vacancies. The only such question to reach the Maine Supreme Judicial Court concerned the legality of a school committee meeting. In Elsemore \textit{v.} Hancock,\textsuperscript{19} two questions pertinent to the present discussion were raised: (1) Must each member of a school committee be personally notified of a meeting? and (2) Is a meeting of the school committee valid when one member is not present because he is out of town? In answer to the first question, the Court held that there must be an official notice of meetings of school committees; a verbal message of a meeting, left at a member's house is sufficient, whether or not the member is at home. In response to the second question, the Court held that a school committee meeting is not invalid because one member does not attend as a result of being out of town.

\textsuperscript{18}Maine School Board Quarterly, \textit{Duties and Functions of School Boards} (Orono, Maine, April, 1967).

\textsuperscript{19}Elsemore \textit{v.} Inhabitants of the Town of Hancock, 137 Me. 243 (1941).
The other questions cited above have been referred to the Attorney General's office and the opinions rendered, until reversed by court decisions or subsequent opinions from the same office, should serve as guidelines for Maine school officials. The opinions are as follows:

"1. A selectman or plantation assessor may not at the same time hold the office of school committee member. These offices are incompatible since selectmen must approve the bills of the school committee.20

"2. The official records of a school committee are in the nature of public documents and should be open to inspection by citizens for reasonable purposes and during reasonable times.21

"3. There is no express provision in the laws for the removal of a member of a school committee. Lacking such express provision, the removal must be governed by the Constitution, Art. IX, Sec. 5, which provides for the impeachment of civil officers for misdemeanor in office, and further provides that every person holding any office may be removed by the Governor with the advice of the Council on the address of both branches of the Legislature.22

"4. A vacancy may be declared to exist on a school committee when a member has resigned, died, or when he has been absent for more than ninety days."23

Superintendents of Schools

It was recognized almost from the beginning of the public school system in Maine that an executive officer of some kind was needed to implement the local policies of the

22 Ibid., p. 155.
school committee. The original statute of 1821 set up a system of dual control between the school committee and an official known as the school agent. The incompatibility of the two offices could have been predicted from the wording of the statutes. The duties of the Committee, on the one hand, included the examination of the school masters and mistresses who proposed to teach school within the town or plantation, and it was further provided that they be empowered to dismiss any school master or mistress who should be found incapable or unfit to teach. The school agent, on the other hand, was to be chosen for each school district to share with the Committee in the control of schools. The agent's duties as stated were to "hire the school masters and mistresses and to provide the necessary fuel and utensils for the schools." It took only five years from the date of enactment of this legislation for litigation to reach the Maine Supreme Judicial Court. In a case already cited, it was held that the authority to hire a school master was vested in the school agent and not the school committee.

This system of dual control persisted until 1893 despite the repeated attempts to abolish the system. As early as 1846, Mr. William G. Crosby, first secretary of the State Board of Education, wrote in his annual report that, in his

24 Maine, Public Laws (1821), c. 67, sec. 7.
25 Moor v. Newfield, 4 Me. (4 Greenl.) 44 (1826).
opinion, the majority of the school agents were incompetent, neglectful and uninterested in the work of the office. He felt that the agents were more interested in the prestige, profit and local prominence that they might gain than in providing good schools. He commented at considerable length on the favoritism shown local teachers, the employment of incompetent persons as teachers and the petty quarrels and small politics which were constantly in evidence, and he finally became caustic in his remarks relating to the failure or refusal of district agents to cooperate with the superintending school committee.  

The records reveal a continuing state of unrest and controversy, resulting in a large number of Supreme Judicial Court cases, until the repeal of the district system in 1893.

In 1897, the act of 1893 which provided that the school committee might, if the town so voted, elect a superintendent of schools, was amended, and thereafter this office was mandatory. This official, the replacement for the school agent, is recognized legally and professionally as the chief school official of the local school system. This position continues in Maine today as it does in virtually all of the states although the title may vary from one jurisdiction to another.

The necessary professional competence of such a person was recognized and ably described in 1896 by Mr. W. W. Stetson,

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the State Superintendent of Public Schools. These same general qualifications are sought in candidates for the post today.

Mr. Stetson's comments were as follows:

To superintend schools intelligently, one needs scholarship, professional training, and experience in the work of the school room. He needs to know the subjects studied, the methods used in giving instruction and to be familiar with the history, science and art of education.

He must not only be familiar with the facts taught in textbooks, but he must also be a student of science, art, literature, history, and economy. He must know what the world has done, what it is doing, what it is capable of doing. He must know men, things, means. He must be strong of mind, rugged of body, rich in personality. His work must be his absorbing vocation. To this he must give his entire time and devote his best thought. He must study schools; he must study children. One cannot do and be all these things unless he has an aptitude for the work, has prepared for it and gives his whole time to it.27

Maine Superintendents have clearly defined powers and duties spelled out in the statutes in addition to whatever authority may be delegated to them by the school committee.

A partial list of these duties as written into the law follows:

"1. He shall be, ex officio, secretary of the school committee or board of directors and of any school building committee chosen by the administrative unit and shall perform such duties not enumerated as said committees or board shall direct;

"2. He shall keep a permanent record of all its votes, orders and proceedings. He shall place orders for materials and supplies purchased by vote of the committee or directors and shall be its agent in keeping all financial records and accounts;

"3. He shall examine the schools and inquire into the regulations and the discipline thereof and the proficiency of the pupils, for which purposes he shall

visit each school at least the minimum number of times each term which the joint committee may designate. He shall make a written report annually of the condition of the schools for the past year, with a statement of the condition of school buildings, the proficiency made by the pupils and the success attending the modes of instruction and government thereof, and transmit a copy to the commissioner;

"4. He shall keep a faithful and accurate account of school finances, and he shall report at least once a term in writing to each of the several committees or directors, including in such report a statement of the condition of the schools, a financial statement and a statement of the condition of school buildings and outbuildings in the matter of repair, cleanliness and sanitary arrangement;

"5. He shall nominate all teachers subject to such regulations governing salaries and the qualifications of teachers as the school committee or school directors shall make, and upon the approval of nominations by said committee or directors, he may employ teachers so nominated and approved for such terms as he may deem proper, subject to the approval of the school committee or directors. . . . In case the superintendent of schools and the superintending school committee or school directors fail to legally elect a teacher, the commissioner shall have authority to appoint a substitute teacher who shall serve until such election is made;

"6. He shall direct and supervise the work of all teachers;

"7. He shall select textbooks, supplies and apparatus subject to the approval of the school committee or school directors and shall make all purchases of the same under such regulations as the school committee or school directors shall adopt;

"8. He shall see to it that all necessary apparatus and supplies are seasonably distributed to each school and accurately accounted for and economically used;

"9. He shall enforce or cause to be enforced all regulations of the school committee or school directors;

"10. He shall devote his entire time to superintendence in the towns comprising the union or School
Administrative District."^28

There is lack of agreement, around the country, concerning the legal status of a superintendent of schools within the educational hierarchy. The status of school committee members as state agents or state officers has been well established. The status of superintendents is not so clear. Some courts have held that a city superintendent is a public officer or a state officer, and that his powers and duties relate entirely to the administration of the public school system which is a function of the state government. Other opinions hold that a city superintendent is an employee of the board. In County Court of Summer County v. Nicely, the Court said the following:

... It is difficult to see how one who stands in a purely contractual relationship with a board of education can be regarded as being clothed with all the privileges and prerogatives of a public office. More important still, the true test of whether or not one occupies a public office is: Do the duties of the position require him to exercise a part of the sovereignty of the state? At present, at least, it would seem that whatever part of the sovereignty of the state is delegated, in connection with education, is delegated to the board of education.30

The Maine superintendent has been classified as a public officer. His position is established by law and his duties are legally defined. The landmark case in Maine on

29 Edwards, op. cit., p. 115.
30 County Court of Summers County v. Nicely, 121 W. Va. 767, 6 S.E. (2d) 485.
this point is Benson v. Inhabitants of Town of Newfield. This case concerned the illegal dismissal of a teacher and will be reported in detail in a later chapter. Of interest here is a quote from the opinion which reads as follows:

... The superintendent of schools is a public officer and his acts in that capacity, so long as in line with the performance of his official duties, are presumed to have been done in accordance with law, for every person holding office or trust is presumed to perform his duties without its violation.31

With respect to the retirement system, however, a superintendent is considered to be a state employee or teacher. In 1954, a question was directed to the Attorney General as follows: "Is there any provision in the law to prevent or bar the position of superintendent of schools from being considered that of a state employee?" Attorney General Frost replied as follows: "The only applicable statute is Section 1, Chapter 60, R.S. 1944, as amended. Under this section of the law, for the purposes of retirement only, 'employees' of the State of Maine participate in the Maine State Retirement System. Employees include teachers, and teachers are defined to include the superintendent employed in any day school within the State."32

School superintendents are elected by school committees, school directors, or in the case of a school union by a joint union committee for terms of not more than five years. Superintendents are not eligible for continuing contracts or tenure

31 Benson v. Inhabitants of Town of Newfield, 136 Me. 23, 1 A. 2d 227 (1938).
status as are teachers. School committees or school directors may, by a majority vote of their full membership, after due notice and investigation, discharge a superintendent for cause before the expiration of his elected term. The superintendent has the right of appeal of such a dismissal to the commissioner for a public hearing.

The legality of contracts between a school committee and the superintendent of schools was considered in a Lewiston case in 1910. Mr. Arthur J. Collins was superintendent in Lewiston in 1907-08. In April, 1909, he was reelected to the position for the next year at a salary of $2,000. In August, 1909, the Lewiston School Committee and Mr. Collins executed the following contract:

This Agreement, entered into by and between the Lewiston School Board, party of the first part, and Arthur J. Collins, party of the second part, is an agreement of contract to specify and set forth more fully the election, duties, privileges, tenure of office, and salary of the said party of the second part as superintendent of schools as previously voted by the said Lewiston School Board. The parties to this contract agree that the election of the party of the second part as superintendent of schools by the party of the first part at the regular meeting of the School Board, April 5, 1909, is for the natural school year August, 1909, to July, 1910, and that the duties, privileges, and responsibilities shall be the same as during the past two years. The party of the first part agrees that a salary of two thousand dollars ($2000.) shall be paid to the party of the second part in ten (10) equal monthly payments; but in case the said party of the second part is discharged, dismissed, superceded by another, or in any other manner deprived of his office, or interfered with in the performance of his duties, all parts of the said salary of two thousand dollars then unpaid to the party of the second part shall immediately become due and payable. (Italics mine)
In consideration of the payment of salary and expenses as above set forth, the party of the second part agrees to faithfully perform the duties and obligations as superintendent of the Lewiston Public Schools.\(^{33}\)

Mr. Collins entered upon the performance of his duties under his appointment and continued his services until September 6, 1909, when he was summarily dismissed by the school committee. The special law in the Lewiston City Charter under which the committee acted read in part as follows:

Section 2. The superintending school committee of said city of Lewiston, may exercise all the powers conferred, and shall discharge all the duties imposed, by law, on superintending school committees; and they may also appoint a superintendent of schools and truant officers, for such term and with such compensation as the superintending school committee of said City of Lewiston may determine. Such superintendent may be removed at the pleasure of said committee, and any vacancy shall be filled by their appointment.

Mr. Collins, in seeking to recover his year's salary, contended that, under his contract, having been ready at all times to perform his part of the agreement, he was entitled to recover his full salary.

The Court ruled otherwise. Justice Spear's opinion follows:

... After conferring the power to contract the statute contains this express provision: "Such superintendent may be removed at the pleasure of said committee, and any vacancy shall be filled by their appointment." This clause confers upon the committee summary authority to dismiss a superintendent at any

\(^{33}\)Collins v. City of Lewiston, 107 Me. 220, 77 A. 834 (1910).
state of his services. It does not require the preferment of any charge or proffer of any reasons, but permits action "at the pleasure of said committee."

The plaintiff's employment was for the "natural school year" without any further agreement. The written contract, would, therefore, seem to have been executed for the sole purpose of defeating the express provision of the statute.

The contract, as construed by the plaintiff, is in direct conflict with the statute, and completely inhibits its intended operation. The defendant contends that the contract was ultra vires and that the committee could not thus deprive themselves or their successors of the right to exercise an authority, which might at any moment assume the form of a duty, clearly imposed upon them by statute.

This contention must prevail. When a contract conflicts with a statute, the former must yield. Otherwise, statutes could be modified or repealed without even the approving caress of the referendum.34

The implications of this case are clear. Contracts negotiated between school committees and school personnel cannot contradict the statutes either at the state level or those contained in city charters granted by the legislature.

By mutual consent, a contract between a superintendent and a school committee may be altered. Attorney General Cowan ruled in 1943 that "Upon mutual agreement between a joint school committee and a superintendent of schools, the terms of a contract can be changed to provide for (a) an increase in salary for the remainder of the contract and/or (b) a lengthening of the period of the contract as originally drawn."35

The last case to reach the courts concerning the powers and duties of the superintendent of schools occurred

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34 Ibid.
in 1934. In Inhabitants of Town of Farmington v. William F. Miner, an action was brought by the inhabitants of the town of Farmington to recover town moneys alleged to have been illegally received and disbursed by William F. Miner, the superintendent of schools. Specifically, the four allegations were: (1) that it is the duty of the superintendent to make personally the annual school canvass and census, and the employment of another person for that purpose at the expense of the town was unauthorized; (2) that the reimbursement for expenses incurred in attending a superintendents' convention was not a proper charge against the state school funds nor money raised by the town for the support of the common schools, nor money which the town is required to appropriate; (3) that it was an unlawful expenditure of public moneys to provide for an allowance for the use of the superintendent's automobile in the performance of his official duties; and (4) the superintendent had no authority to hire and pay the rent for an office for his and the school committee's use.

On all four points the Court ruled in favor of the defendant, Mr. Miner. In rendering the opinion, the Court made several observations which have important implications for the practicing school superintendents in Maine today. Excerpts from this opinion are here quoted:

36Inhabitants of Town of Farmington v. Miner, 133 Me. 162, 175 A. 219 (1934).
... The school census is the basis of a large annual apportionment of state school funds to the several towns and cities. All superintendents of schools in the state, union or otherwise, and regardless of the school population under their supervision, are required to certify these returns annually in order that the apportionment of state funds may be made as provided by law. In this provision, we find a legislative recognition of the well-known fact that in larger cities and towns, and in some of the school unions, it is entirely impractical, if not impossible, for the superintendent of schools to personally canvass the school population and attend to their other necessary supervisory duties, and, whenever it is necessary, they may employ other persons at the expense of the town to make the preliminary canvass for the annual school census. ... 

... The first item in the account annexed is for money which the defendant Miner drew as reimbursement for expenses incurred in attending a superintendent's convention. His bill for this disbursement was approved in advance by the school committee and paid from the treasury of the town on the order of the municipal officers. It does not appear in the case stated from what appropriations this money was drawn. It came to the superintendent in an order from the treasurer which included other items approved by the school committee and certified by the superintendent. It is true that it was not a proper charge against the state school funds nor money raised by the town for the support of the common schools. It always has been, however, and still is within the power of the municipalities to raise such amounts in addition to the required appropriations as they may deem proper. ... [T]he progress and advancement of our educational system demands trained superintendents, educated, experienced and in touch with modern school methods and practices, and it is now generally recognized that the conventions of superintendents, as well as teachers, have a real educational value and tend to promote the efficiency of those attending. Under the broad powers given towns to raise money for school purposes by our laws, we cannot lay down the rule that the payment of the expenses of a superintendent to a convention is an illegal expenditure of public moneys.

... When he was first elected superintendent, the joint committee of the towns apportioned his salary and added a travel allowance which they were not authorized to grant. However, each year during the first term of the superintendent's appointment, the school committee of Farmington approved this change and the municipal officers recognized its propriety by drawing orders on
the treasury for its payment. Under the statutes then in force, the town was not compelled to make this payment. It had a right to do so, however, if it saw fit. It was not in itself an unlawful expenditure of public moneys... . . . In Section 5 of Chapter 206 of the Private and Special Laws of 1891, the Act expressly provided that a suitable and convenient room shall be furnished by the town for the superintendent's office and the meetings of the school committee, wherein shall be kept their records... . . even if the superintendent of schools and the school committee did not have authority to hire and pay the rent of this office without the consent of municipal officers, the supplemental approving and ratifying action of the municipal officers binds the town.\footnote{37}

The dual control of school committee and school agent under the old district system was largely eliminated in the legislation providing for superintendents of schools in 1897. It is interesting to note that in at least one area, the employment of teachers, a balance of power still exists. The superintendent has the sole authority to nominate teachers while the school committee has the sole authority to approve or reject the nominations of the superintendent. While this balance of power in regard to the selection of teachers has been generally satisfactory, there have been instances where the superintendent could not or would not nominate the candidate favored by the school committee, nor would the committee approve the nominee of the superintendent. This awkward situation was partially remedied by a statute passed in 1913, and still in effect today, which provides that when the superintendent and the committee cannot agree and legally

\footnote{37}{Ibid.}
elect a teacher, the Commissioner of Education has the authority to appoint a substitute teacher to serve until such election is duly accomplished.\textsuperscript{38}

\textbf{Summary}

This chapter has traced the delegation of authority for the operation of the public schools from the state to the local level. While the authority to create, alter or dissolve school districts is clearly a matter for the legislature to decide, the maintenance and operation of these districts is delegated almost entirely to the local level.

The legislature has provided for the election of school officers to manage the public schools. While chosen by the local electorate, these officers, known as school committee members or school directors, are agents of the state and are responsible to the state, rather than the local district, for the performance of their duties.

The powers and duties of these local district officers have been reviewed in some detail. Rules and regulations passed by these officers in a legally constituted meeting have the force and power of law at the local level, unless contrary to state statutes.

With the phenomenal growth of the public school system it became evident that these officers, laymen in the

\textsuperscript{38}Maine, Revised Statutes Annotated (1964), c. 7, sec. 161, par. 5.
field of education for the most part, needed professional assistance in carrying out their mandate from the legislature. As a consequence the legislature provided for a chief local school administrator known as the superintendent of schools. While employed locally by the district officers and serving at their discretion, the school superintendent in Maine holds a unique position in the administrative structure of public education. His powers and duties are clearly defined by the statutes and he is considered by the courts to be a public official. By law, he serves as the secretary, ex officio, of the local school committee and of any school building committee chosen by the administrative unit which he serves. His many duties and responsibilities, as well as his privileges, sets him apart from all other employees of the local school district.
CHAPTER IV

SCHOOL DISTRICT REORGANIZATION

Introduction

As a result of the early delegation to localities of the power to structure educational administration, a tradition of local control has developed over the years, based more on sentiment and political expediency than on efficiency and economy of operation. Despite exceptions, the history of school district consolidation around the country has been for the most part one of cajoling and wooing rather than one of state exercise of powers generally recognized to be in the states' domain. The interplay of heavy state commitment to the financial support of education and the equally great degree of local attachment to the schools has led to a constant conflict which has created a variety of statutes on redistricting. One author, after reviewing court decisions on school district reorganization in the United States, had the following to say on the subject:

The litigation of local quarrels concerning the necessary and inevitable reorganization of school districts makes up one of the most voluminous and most arid chapters in American law. . . .

No one should suppose that these cases have any great intrinsic importance. Their significance is chiefly in their triviality—and in the powerful argument thereby tacitly made for legislative intelligence and courage. The need is for state legislatures to accept their responsibility as law-making representatives of the people,
to sweep aside the incomparably tangled jungle of thousands of outmoded districts encumbered with the legal debris of a century, and give their states a county-unit system or something closely akin to it.¹

The nation's school districts come in all sizes and shapes and present some interesting contrasts. Alaska's School District One, geographically the nation's largest, contains all the schools of the forty-ninth state except those of twenty towns and villages. Hawaii is actually one large statewide district. But most school districts are town and township units, controlled by an elected board of education. In 1932, there were 127,422 school districts in the United States. By 1961, reorganization efforts had whittled the number to 36,880 and by 1965 to 26,983.²

Despite the reduction in numbers of districts, half of the nation's school districts in the late 1960's had fewer than ten teachers, and in the early 1960's there were more than 9,000 elementary schools with only one teacher.³

School district reorganization in New England has, in general, been even slower than in other sections of the country. In a 1962 report,⁴ the breakdown for reorganized districts of


⁴John Hodgen, "Regionalization in Massachusetts: A
the six states was as follows: New Hampshire--one 9-12 district, six 1-12 districts, total (7); Rhode Island--two 7-12 districts, total (2); Connecticut--seven 7-12 districts, one 9-12 district, total (8); Maine--twenty-two K-12 districts, total (22); Vermont--four 7-12 districts; two 9-12 districts, total (6); and Massachusetts--eighteen 9-12 districts, twenty-two 7-12 districts, two K-6 districts, one K-12 district, total (43). More recent figures will be included in a later section as a basis for comparison, but the statistics suggest that the solution to the problem has been something less than spectacular.

Major Problems in Redistricting

There are numerous problems in consolidating school districts in the United States. Typical of these are the traditions of local control, finance, geography, urban problems, ethnic problems and lack of state leadership. These problems have been widely reported in the literature and will not be discussed here. Redistricting problems peculiar to Maine, however, will be included as a backdrop to the succeeding sections on redistricting legislation and the litigation that has arisen as a result of it.

Geography. Maine ranks 39th in size among the states

and yet has a total population of less than a million people or 969,265 as of the 1960 census. The population density is only twenty-nine persons per square mile.\(^5\)

Other interesting features about Maine's geography include the following: the highly indented coast, if unraveled into a straight line, would stretch from New York to Arizona and off this coast are many islands inhabited year-round; one county, Aroostock, is larger than Connecticut and Rhode Island combined; and within Maine's borders lie 17,000,000 acres of forests, more than 2,000 lakes and 5,000 rivers.

These facts point up one of the major problems in forming larger school districts, namely transportation. In fact, one small hamlet, Estcourt, located in the extreme northwest tip of the state, has no road leading to any other section of the state! The pupils walk across a bridge to the Province of Quebec where they attend school on a tuition basis.

Finance. While finance is a nationwide problem in education, Maine has extremes in economic differences between districts which would be difficult to match anywhere. One commonly used yardstick in school finance is the amount of assessed valuation per student in average daily attendance. One report states that Maine has a range in local valuation per pupil from $1,727 to $620,000.\(^6\) These inequities cause


resentment among taxpayers and tend to keep the richer districts from joining with their less fortunate neighbors. This problem has occurred in Maine where school districts, within whose limits are located large paper mills, have been reluctant to form larger districts with neighboring towns without such industry. Also, school districts along the coastal areas, where real estate valuation is higher than inland, have been reluctant to join with their "inland" neighbors.

Local Control. The history of local control of education in Maine has been traced in previous chapters. It will be remembered that the original district system which provided for several school districts with their own school committees within one town or township existed for approximately three-quarters of a century before local control was finally vested in the town or city itself with one general school committee. Shortly after this important change, towns were authorized to join together into school unions for the purpose of employing a joint superintendent of schools, although local control of education was still vested in the school committee of each member town.

This type of control is still one of the more common ones and the newer concept of several towns joining together to form a school administrative district to be controlled by a board of directors representing the several towns is still not popular in some areas.

Tradition. One other impediment to reorganization
which cannot be underestimated is tradition. Local citizens have a considerable amount of pride in their own school system, and in their high school in particular. It seems to matter little, in the minds of many residents, how small or inadequate the schools may be. Many of the voters graduated from these schools and have a strong sentimental attachment to them. Many such schools have had at least one outstanding athletic team that has won statewide publicity and recognition for the school and the town. To many people, the loss of the local high school through consolidation means loss of identity, as well as control. One high school with a total enrollment of eleven pupils, located on an island, recently won the statewide basketball championship. The school's team brought much glory and publicity to the island as well as the school. Consider the reluctance with which the voters will decide to close the school and send their pupils to the mainland to a consolidated school, when such a time to vote eventually arrives. The problem of overcoming local sentiment and tradition is obviously of no small concern to those pushing consolidation.

Legislation

Community School Districts. The adequacy of the town as the administrative unit for school purposes has been questioned repeatedly, but the most serious challenges have come since the end of World War II. Maine, as all other states, has felt the pressures of the postwar baby boom, the increased
demands from the public for quality education as well as the need for more diversified programs to meet the needs of all pupils. Along with the need for increased services, expanded programs and additional school plant facilities have been the ever-increasing costs of education as reflected in higher salaries for teachers, increased costs of books and supplies and higher costs of school construction.

In keeping with the trend in other states to form larger administrative units to share costs and to keep duplication to a minimum, Maine passed its first legislation in 1947. Known as the Community School District Law, it permits two or more towns to join together in a Community School District to operate joint schools. The primary intent in this legislation seems to have been to encourage towns to join together as one administrative unit for secondary education although it is possible to form Community Schools at the elementary level. These districts are operated by two boards, one known as the board of trustees, and the other as the community school committee. The duties of the former read as follows:

All of the affairs of said district, except election of teachers who shall serve in said school or schools and the fixing of their salaries, the courses of study, the terms of school and other matters pertaining to the education of pupils, which matters shall be controlled by a community school committee, shall be managed by said board of trustees.\footnote{Maine, Revised Statutes, Annotated (1954), c. 41, sec. 121.} \footnote{Ibid.}
The community school committee has all the powers and duties with respect to the community school as are conferred by the general statutes to superintending school committees.\(^9\)

It is interesting to note that the construction, care and maintenance of buildings are the responsibility of one board under this legislation while the actual operation of the schools is under another.

This legislation is permissive and carries with it no financial inducements for towns to form Community School Districts other than the local opportunity to share costs in the construction and operation of schools. Except for the earlier union legislation which permits two or more towns to share in the cost of a superintendent and other supervisory personnel, this represents the first time that local districts were encouraged to share costs in the maintenance of their schools.

The Community School District idea never really caught on, however. At its peak there were eight districts in operation. As of 1968, just two remain in operation. While blazing the trail for larger school administrative units, the legislation seems not to have met the needs of the majority of the people and has been reinforced by newer legislation, first enacted in 1957, commonly called the Sinclair Act.

Before discussing this latest reorganization statute it is appropriate to review the one case to reach the Maine Supreme Judicial Court relative to the formation of Community

\(^9\)Ibid., sec. 351.
School Districts. Opinions from the decision have implications for the more recently organized school administrative districts and have been, in fact, frequently referred to in later decisions. In *Knapp v. Swift River Valley Community School District*, the facts of the case are interesting. On March 5, 1956, the Town of Roxbury voted: to join with the Town of Byron to form the Swift River Valley Community School District; to authorize the District to acquire and hold property of a value not in excess of $40,000; and to authorize the District to borrow money and issue its bonds and notes in an amount not in excess at any time of $36,000. On March 19, 1956, like votes were passed at the town meeting of Byron.

The trustees of the District were subsequently appointed by the municipal officers of each town. On March 21, 1956, the trustees filed their return with the Secretary of State as required by statute and the Secretary issued a certificate on March 23 that the District "had been duly organized as a politic and corporate entity." On March 26 the District borrowed $5,000 from a bank.

We come now to the action of the Town of Byron from which the litigation arose. On April 6 at a special town meeting, the Town of Byron voted against the very propositions it had voted for on March 19. That is, Byron voted: (1) against joining with Roxbury to form the school district; (2) against

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authorizing the District to acquire and hold property; and
(3) against authorizing the District to borrow money. In brief,
the Town of Byron did a complete turnabout on April 6 from its
action of March 19.

The plaintiffs, ten taxable inhabitants of the Town of
Byron brought suit to enjoin the defendants, the trustees of
the newly formed Community School District, from borrowing or
expending funds since, by their contention, the action of Byron
in voting against the District on April 6 destroyed the Dis-
trict. The "ten taxable inhabitants" statute under which the
action was brought reads in part as follows:

When counties, cities, towns, school districts,
village or other public corporations, for a purpose not
authorized by law, vote to pledge their credit or to
raise money by taxation or to exempt property therefrom
or to pay money from their treasury, or if any of their
officers or agents attempt to pay out such money for
such purpose, the court shall have equity jurisdiction
on petition or application of not less than 10 taxable
inhabitants thereof, briefly setting forth the cause of
complaint.\footnote{Ibid.}

The defendants contended that the "ten taxable in-
habitants" statute did not apply and that the Town of Byron's
withdrawal from the District was not legal. With this the
Court agreed. Justice Williamson said in part:

\ldots [W]e are not inclined to seek subtle differences
in the meanings of words. The plain fact is that if the
plaintiffs are correct, Byron has destroyed The Swift
River Valley Community School District. Roxbury had no
part in the Byron vote whether we call it a vote to
dissolve the District or to suspend its activities. If
the right of the District to do business depends from
day to day upon the votes of town meetings first
granting, then taking away, and perhaps again granting
rights, it is apparent that a District, duly organized,
would not be worthy of the name of a quasi-municipal
corporation with rights and powers, duties and obliga-
tions of its own.12

Of particular significance to school officials is the
following excerpt:

... The control over a district to be exercised by
a member town is limited by the terms of the statute.
Each town selects trustees and members of a school com-
mittee, who then serve the district, not the town.
Their authority is determined by the Statutes relating
to community school districts and not by the will of
the town.
The district is a creature of legislative action.
Its creation and likewise its dissolution are solely
within the power of the Legislature. The Legislature
has made full, complete, and readily understandable
provisions for withdrawal of a town from a community
school district. Withdrawal requires not only action
by the town, but action by the Legislature as well.13
(Italics mine)

Withdrawal from a Community School District is still
permissible under existing law but the town in question must
vote to withdraw by a two-thirds vote and then receive
authorization by special act of the legislature. No withdrawal
is allowed while there is indebtedness outstanding. It is
appropriate to point out at this time that withdrawal from
a school administrative district, the newer type district
authorized by the Sinclair Act, was permitted under the
original Act of 1957 but this act was amended in 1961 to pro-
hibit withdrawal.14

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12 Ibid.
13 Ibid.
14 Peterson, op. cit., p. 168.
district is still possible and will be discussed in the section to follow.

School administrative districts. After approximately ten years of experience with the Community School District legislation and its relative lack of success in creating larger administrative units, new legislation was passed in the form of Legislative Document 1637, "An Act Relating to Educational Aid and to Clarify the Procedure of Reorganization of School Administrative Units," in 1957. Commonly called the Sinclair Act, after its sponsor, this is perhaps the most significant piece of legislation relating to education to be passed in Maine since the demise of the school district system in 1893.

Unlike previous legislation pertaining to school districts, the Sinclair Act provides certain financial rewards for the formulation of school administrative districts from the state. This one factor, more than any other, seems to be the key to success in school district reorganization in Maine, as elsewhere. Under this legislation, school administrative districts are entitled to a 10 percent reimbursement bonus from the state for their annual operating costs. They are also entitled to state reimbursement for school construction costs of from 18 to 66 percent depending upon the combined valuation of the district.

The intent of the legislature in passing this legislation

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15 Maine, Revised Statutes (1957), c. 9, sec. 211.
is clearly stated in Section 211:

It is declared to be the policy of the State to encourage the development of school administrative units of sufficient size to provide a more equalized educational opportunity for pupils, to establish satisfactory school programs and to achieve a greater uniformity of school tax rates among the School Administrative units and a more effective use of the public funds expended for the support of public schools.\footnote{16}

While the formation of school administrative districts is completely voluntary and requires an affirmative vote of all of the participating towns, it was evidently the intent of the legislature to include all towns and school administrative units under a minimum size within a reasonable time. Section 212 reads in part as follows:

\ldots \text{The State Board of Education shall, after a master plan for school administrative district organization is presented to the 103rd Legislature, as ordered in Senate Paper 453 of the 102nd Legislature and accepted by the 103rd Legislature as presented with modifications, approve the formation of School Administrative Districts only in accordance with the plan adopted. It further is the intent of the Legislature that all municipalities with fewer than 500 resident high school pupils and not in School Administrative Districts shall, within a reasonable time after adoption of the master plan for school administrative district organization, join into School Administrative Districts in accordance with the master plan.}\footnote{17}

A master plan was presented to the 103rd Legislature but was not accepted and that part of Section 212 quoted above has been repealed.\footnote{18} Evidently a master plan for the entire state,  

\begin{footnotes}
\item[16]\textit{Ibid.}
\item[17]\textit{Ibid.}, sec. 212.
\end{footnotes}
mandatory for the smaller districts, is a major step which the legislature is not yet ready to take.

As might be expected, the legal implications and constitutionality of this new major legislation in the field of education were soon to be challenged. The remainder of this section will be devoted to a review of the cases to reach the Maine Supreme Judicial Court on the Sinclair Act.

The first questions to be raised were propounded by the State Senate in an order dated January 13, 1958 and answered in an Opinion of the Justices on January 14, 1958, in what would appear to the layman to be a remarkably speedy response in comparison with the usual speed with which the wheels of justice turn.

It might be noted at this point that official opinions from the Justices of the Maine Supreme Judicial Court, like those from the Attorney General's office, carry considerable weight and influence but do not constitute the law. Nor is any court of law necessarily bound by these opinions. No less an authority than Justice Cornish pointed out in 1912 that "It is true that the opinions of Justices given at the request of either Branch of the Legislature or of the Executive, do not have the binding force of decisions in adjudicated cases, yet they carry weight in proportion to the reasons upon which they are based."  

The complete text of the Opinion is included in Appendix A. For purposes of the present discussion it is sufficient to quote the major points on the constitutionality of the legislation as follows:

... The Legislature did not violate the Constitution in delegating authority to the State Board of Education and the School District Commission to carry out the provisions of the Act.

A School Administrative District organized under the Act is a "body politic and corporate." It is a quasi-municipal corporation of the familiar pattern of school, water, recreational, and sewerage districts. The indebtedness of a School Administrative District thus is not the indebtedness of such municipalities.

The limitation on municipal indebtedness applies to cities and towns and not to other entities, or, as here, a School Administrative District.

Municipalities providing for their public school system by the medium of School Administrative Districts will nevertheless thereby be making suitable provision for the support and maintenance of public schools, and by their proportional contributions to the expense incurred by such Districts will be in compliance with both the letter and spirit of the Constitution. The Legislature, by making provision therefore, will have satisfied the mandatory constitutional requirements imposed upon it.

As for home rule, municipal plebiscites fulfill such requirements. The creation of a body politic and corporate is not the granting of a franchise or license within the meaning of the constitutional prohibition. The proposed Act contains no grant of any franchise or license but does no more than to provide mechanics by means of which municipalities may initiate voluntary action to form School Administrative Districts.

The Act proposed observes the requirements of the Constitution for equal taxation by adopting the state valuation.21

The following cases include questions of procedure as well as constitutionality. In reviewing these cases it is interesting to speculate as to whether these procedural questions

were raised in the interests of judicial nicety or as stumbling blocks to preserve local control as long as possible.

The first case to reach the Supreme Judicial Court was McGary v. Barrows in 1960.\textsuperscript{22} This was indeed a landmark case and has been referred to repeatedly in subsequent litigation. An action for a declaratory judgement was brought by ten taxpayers and residents of Farmington designed to test the constitutionality of the statutes under which School Administrative District No. 9, comprising the Towns of Farmington, Chesterville, and Industry, was organized.

Specifically, the taxpayers argued that: (1) the Act violated Article VIII of the State Constitution in that towns thereby escape an obligation to support and maintain public schools, and are also deprived of the responsibility for the operation and control of schools within their jurisdiction; (2) there was an unlawful delegation to the School District Commission in violation of the constitutional provisions relating to the separation of powers under the State Constitution; (3) the section which empowered the Commission, without notice, hearing, or right of appeal, to issue a certificate of organization, deprived them of property without due process; and (4) that the Act impaired the obligation of contracts in violation of Article I, Section 10 of the U.S. Constitution, and Article I, Section 2 of the Maine Constitution.

The Court held for the defendant School Administrative

\textsuperscript{22} McGary v. Barrows, 156 Me. 250 (1960).
District No. 9. Excerpts from the decision which answer the allegations above in the order in which they are stated follow:

Municipalities providing for their public school system by the medium of School Administrative Districts will nevertheless thereby be making suitable provision for the support and maintenance of public schools, and by their proportional contributions to the expense incurred by such Districts will be in compliance with both the letter and spirit of the Constitution.

The School District Commission is an administrative agency designed by the Legislature to administer the Sinclair Act and thus to make effective the declaration of policy... The Commission exists "for the purpose of promoting, developing and adjusting a state plan for the creation of efficient School Administrative Districts throughout the State and for the purpose of approving applications for the organization of School Administrative Districts."

The desirability and practical need of some such agency, whether it is a board, commission or officer to administer the Act is apparent. The Legislature cannot be expected to investigate each situation throughout the State relating to the new school policy and to make the findings required to meet the standard set by the Legislature... That the Legislature has the power to undertake this task and the right to exercise this power at any time or in any case, does not deny the authority of the Legislature to place important responsibilities in administration upon any agency such as the School District Commission... The Commission does not make law. It administers the established law.

A school district, being an auxiliary of the State for purposes of education, the legislature may provide for its creation, control, and regulation, without violating the due process guaranty, with respect to the property rights of the district or of property owners therein... A school district is a public agency or trustee established to carry out the policy of the State to educate its youth. The Legislature may change such agencies, and control and direct what shall be done with school property... School property is public property, the property of the incorporated district and not of the taxpayers residing within it.

In voting upon the question of the formation of the proposed School Administrative District, each municipality must vote "To see if the municipality will vote to authorize the district to assume full responsibility for amortizing
the following listed indebtedness now outstanding in the municipalities and school districts comprising the School Administrative District under consideration."

The intention of the Legislature is clear, namely, that sinking funds and other moneys dedicated for payment of particular indebtedness assumed by the School Administrative District be used for such purposes and none other. We cannot, however, anticipate issues, constitutional or otherwise, which might arise in the application of this provision of the statute to a particular set of facts. No given situation is presented on the record for our consideration.23

These rather strongly worded statements from the Court, once again reinforce the concept of education as a state function and responsibility. They also confirm the authority of the legislature to create, alter, or dissolve local school districts for the purposes of carrying out the provisions of Article VIII of the Constitution. Another important legal implication arising from this case is the firm conviction that in joining school administrative districts, towns while losing local control in part, are fulfilling their obligation to provide for public schools. Finally, the Court leaves little doubt that school districts are but auxiliary arms of the state and that the legislature may provide whatever machinery or agencies as are necessary for the creation, control, and regulation of such districts.

A second case reached the Maine Supreme Judicial Court from Aroostook County in 1961.24 This litigation was concerned almost entirely with the mechanics of proper organizational

23Ibid.
procedure.

Ten residents and taxpayers of the Town of Perham, one of six towns comprising School Administrative District No. 2, brought an action to declare the acts of the directors of this District to be null and void, and to seek a declaratory judgement that the District did not exist since it was illegally organized. The Town of Perham had voted to withdraw from the District. The taxpayers made the following allegations in their suit: (1) that the Town of Perham was not a member of the District because the District was not in existence at the time when the Town of Perham voted to withdraw from the District; (2) that the directors did not properly organize; (3) that the vote by the Town of Washburn to assume its proportionate share of the indebtedness of the District was not in conformity with the law and invalid; (4) that the District, not having been properly organized, made the acts of the directors null and void; and (5) that the operating budget was invalid since it was allegedly approved at an illegal meeting because no voting list was used to secure the majority vote necessary.

Due to certain irregularities in the manner of pleading by the plaintiffs, not all of the above points were considered. The taxpayers' appeal was denied, however, by the Court. Once again, the Court ruled that actions of school authorities, taken in good faith, need not necessarily adhere to the technical accuracy of a judicial tribunal in matters of organization and procedure. Justice Dubord declared in part that:
... It having been decided in the McGary case as well as in several other decisions of this court that the Legislature may create school districts without even referring the matter to the people of the communities involved, it inevitably follows that the Legislature may validate, reconstitute and establish a school district, the original organization of which may be clouded with failure of strict compliance with statutory provisions relating to procedure. In the case of a school administrative district, organized under the Sinclair Act, such legislative act of validation precludes successful attack against all acts relating to organization occurring prior to the date of the certificate of organization issued by the Maine School District Commission. \(^{(25)}\) (Italics mine)

In considering the legality of the operating budget, Justice Dubord said the following which is important for school directors operating today's Districts to note:

If a budget for the operation of the school administrative district is not approved prior to April 1st in any given year, the budget as submitted by the school directors for operational expenses, reserve fund and capital outlay purposes shall be automatically considered the budget approved for operational expenses in the ensuing year. \(^{(26)}\)

It should be emphasized that while a majority vote is needed for the approval of the budget for a school administrative district, it is a majority vote of the district voters, not the member towns. Thus, while the budget is considered separately by each member town at its own town meeting, a negative vote by any one town will not defeat the budget unless the aggregate vote in all towns fails to be a majority vote.

In the early days of the Sinclair Act, several other attempts were made by member towns either to withdraw from

\(^{(25)}\) Ibid.
\(^{(26)}\) Ibid.
newly formed school administrative districts, to dissolve them, or to prove their creation to be illegal, through court actions. A review of these cases would add no new guidelines to those already presented. The interested reader is referred to: Elwell v. Elwell, 156 Me. 505 (1960); Peavy v. Nickerson, 158 Me. 401 (1962); and School Administrative District No. 3 v. Maine School District Commission, 158 Me. 420 (1962).

The ability of individual towns to withdraw from a school administrative district constitutes one of the key problems of encouraging voluntary reorganization. The basic problem is deciding between the extremes of legislation so final that no one will join, or so loose that a dissatisfied town can disrupt the new district at will. As pointed out earlier, withdrawal from a Community School District is still possible, but withdrawal from a school administrative district is not.

Dissolution of a school administrative district in Maine must be done with the approval of the State Board of Education which is in a position to protect the rights of creditors. Under the law, dissolution is illegal if there is outstanding indebtedness in the District. The petition to dissolve must carry a two-thirds majority vote of the petitioning member towns and then a majority vote of all of the voters in the District member towns. Only one attempt to dissolve a District has thus far been tried in Maine, in School Administrative District No. 3, and it failed. 27

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27 School Administrative District No. 3 v Maine School District Commission, 158 Me. 420 (1962).
A number of rather specific questions of concern only to the local officials at the time have been answered by the Attorney General but are not of sufficiently general interest to be included here. The reader is referred to "Attorney General Findings Related to Education." 28 One question of general interest was raised in 1964, however, inquiring as to whether the State Board of Education has the authority to refuse to permit the formation of a school administrative district. The Attorney General answered as follows: "According to general law, the State Board of Education may disapprove the applications submitted by local school committees." 29

Current Progress

While it is not the primary purpose of this study to consider legislation or judicial decisions which affect the administration of the public schools in any state other than Maine, it is of value in some instances to review what is happening in other jurisdictions with similar problems. Such is the case with school district reorganization.

As stated in the introduction to this chapter, progress in school district reorganization around the country has been slow and painful. Some states have been more arbitrary and courageous in exercising their authority and responsibility than others. The literature on this subject is voluminous


and readily available to the interested reader and will not here be reported. It might be of interest, however, to cite two examples of what can be done on a statewide basis in redistricting with strong legislative support. The Nevada Legislature, in 1956, summarily abolished all of the 222 school districts in the state and reorganized them into 17.\(^{30}\)

Mississippi's 1953 reorganization law withheld state aid from districts not organized to the state's satisfaction which resulted in a reduction in the number of districts from over 3,000 to less than 150 by 1961.\(^{31}\)

Of more interest to Maine school officials is the current status in New England. In attempting to compare statistics from state to state, the reader should be warned that two major problems exist, that of semantics and the lack of uniformity in reporting facts on an annual basis, since some states define a year as a calendar year while others use the federal fiscal year (July 1 through June 30) as their basis for reporting figures.

The first of these problems can best be explained by listing a few of the titles by which school districts are described in New England. School districts, depending upon the state in question, include the following: school unions; school supervisory unions; community school districts; school administrative districts; school districts; union districts;

\(^{30}\)Peterson, op. cit., p. 147.

\(^{31}\)Ibid., p. 148.
regional school districts; regional vocational school districts; reorganized school districts; and cooperative school districts.

The lack of uniformity in defining the various grade levels included in these districts presents yet another problem. Without boring the reader with all of the possible combinations, suffice it to say that any combination of two or more consecutive grade levels from kindergarten through grade twelve may constitute a school and/or a school district depending upon the state. There is, as a matter of fact, one interstate school district in New England which includes pupils from grades 7-12 from New Hampshire and Vermont. Adding to this the inherent confusion in describing schools as primary, intermediate, elementary, middle, grammar, junior high, high school, and secondary, one must conclude that in comparing statistics from state to state, or even from district to district within one state, it is difficult, even for the professionals, to arrive at meaningful conclusions.

Despite the obvious difficulties in state-to-state comparisons, the following figures are included to provide the reader with some type of index of progress during the past six years. The figures for 1962 were included earlier in the chapter. For the convenience of the reader these same figures as well as the current figures for 1968 are reported in the table below.
### REORGANIZED SCHOOL DISTRICTS IN NEW ENGLAND

<table>
<thead>
<tr>
<th>State</th>
<th>1962&lt;sup&gt;a&lt;/sup&gt;</th>
<th>1968&lt;sup&gt;b&lt;/sup&gt;</th>
<th>Increase</th>
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<td>11</td>
<td>3</td>
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<tr>
<td>Massachusetts</td>
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<td>51</td>
<td>8</td>
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<td>21</td>
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<td>Rhode Island</td>
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<td>1</td>
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<tr>
<td>Vermont</td>
<td>6</td>
<td>16</td>
<td>10</td>
</tr>
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<sup>a</sup>Hodgen, *op. cit.*, pp. 41-45.

<sup>b</sup>Based on interviews with officials of the State Departments of Education of the New England States, April 8, 1968.

Since it is not apparent from the figures above, it should be noted that only two states, Maine and New Hampshire, are redistricting from K-12. Twenty of New Hampshire's twenty-one districts are K-12 or 1-12 and all sixty-one of Maine's districts are K-12.

Admittedly, these figures are somewhat misleading in that they do not reflect the total number of school districts in each of the states. There has been, as a matter of fact, an increase in the number of school districts in Massachusetts during the past few years. This is due to the fact that new regional districts have been superimposed over existing ones without dissolving the latter. In interviewing the officials

<sup>32</sup>Ibid., p. 150.
from the six New England states, however, an attempt was made to obtain the number of reorganized districts where two or more existing districts were merged to form a larger administrative unit. But, as pointed out earlier, it is next to impossible to obtain meaningful statistics from state to state so that direct comparisons can be made. It is unmistakably clear in Maine, however, that the number of school administrative units is decreasing and that larger, more efficient districts are being organized from K-12 at a reasonably fast rate in comparison with the other New England states.

Summary

It has been pointed out in previous chapters of this study that education is basically a state function. This authority, for the most part, has been delegated to local school districts. Local control of education is a cherished tradition in the United States but the balance between efficiency of operation and preservation of local control has become increasingly difficult to maintain. Education has become such a huge and expensive enterprise that the small administrative unit is beset with almost insurmountable obstacles, not the least of which is that of financing the educational program that society demands today.

The consolidation of school districts has been a slow and painful process everywhere. There is perhaps no other governmental function wherein the average voter is so closely
affected. Sentiment for local control is strong. To many, the public schools offer the last opportunity for the exercise of such control. Indeed, many school bond issues are defeated, not because the voters are against new schools, but because this is one of the few remaining areas where the voter can impede the trend of ever-higher taxes, by a direct negative vote.

While consolidation has been slow, it has been steady, as reflected by the figures quoted earlier. Maine has gone through four major phases of school district reorganization: the original school district system in which towns maintained several school districts, each with their own school committee; the supervisory union district in which two or more towns combine for the purposes of employing a professional school superintendent; the community school district in which two or more towns combine for the purpose of constructing and operating a school; and finally, the school administrative district in which two or more towns combine to operate and maintain a complete program from K-12 under a board of school directors representing the member towns.

Despite the numerous problems in reorganization pointed out earlier, Maine has a commendable record in this field. In the ten years that the Sinclair legislation has been in effect, some sixty-one districts have been formed and are in operation. The number of school administrative districts now outnumbers the supervisory unions which have been so popular in Maine since
the turn of the century.

This process of reorganization has not been easy as evidenced by the number of court cases on the subject. More litigation has been precipitated by the Sinclair Act than by any other single piece of legislation in Maine's educational history.

The legal principles seem clear, however. It is the expressed intent of the legislature to include eventually all school administrative units, except the very largest, in a school administrative district. While the first master plan for redistricting the entire state was defeated, there is no reason to doubt that the legislature will eventually adopt such a plan.

Meanwhile, a number of factors are working to encourage the formation of school administrative districts. As a result of legislation passed by the 103rd Legislature, Maine's elementary schools must, for the first time, be approved and accredited. Also, for the first time, Maine's private schools must meet certain standards including standard certification of teachers. The state subsidy foundation program is being reviewed in an attempt to equalize state aid among the towns, depending upon local valuation. These factors, and others, all suggest that school district reorganization in Maine, which has already made a major breakthrough, will be accelerated in the future.

33 Nickerson, op. cit., p. 27.
CHAPTER V

LIABILITY OF SCHOOL DISTRICTS, SCHOOL OFFICERS
TEACHERS, AND OTHER EMPLOYEES

Introduction

Litigation in connection with injuries to school pupils is almost nonexistent in Maine. Only one case has reached the Maine Supreme Judicial Court in this field. This makes the general subject of no less concern to the Maine school official, however. This chapter will concern itself with the general laws of negligence and the implications of court decisions from other jurisdictions which can serve as guidelines for Maine school officials.

All school personnel are in potential danger spots that may leave them open to court actions alleging negligence insofar as pupil injuries are concerned. This is, of course, truer for teachers than for others because of the particular subjects they teach or activities with which they are connected.

Accidents to pupils may take place anywhere on the school premises, the school playground, the corridors and stairways of school buildings, or the regular classroom; injuries may occur during athletic activities, in gymnasiums, science laboratories or shop classes, or during field trips. School administrators and school bus drivers are often concerned
with injuries pupils sustain in school transportation, whether furnished by district-owned buses, or by privately contracted buses. All school employees face the possibility of being sued by injured pupils, or their parents, for alleged negligence. It is in order, therefore, to consider briefly the law of negligence as it applies to public schools.¹

Liability for negligence in connection with personal injury is known as tort liability. A tort is a legal wrong by one person against another. Torts typically include injuries to the person or property of another, but may also involve damage to less tangible interests such as reputation, privacy or freedom from other forms of "nuisance." Torts are generally divided between intentional and negligent wrongs. Among the intentional torts--those in which the wrongdoer deliberately and knowingly injures his victim--are assault, battery, and some cases involving defamation of character such as libel and slander. Negligent torts include injury or damage arising out of carelessness or recklessness without any deliberate attempt or design to do harm to an individual.

Negligence

Negligence defined. Personal liability of school personnel for damages to pupils injured because of their own

¹Material for this section has been adapted from, "Who is Liable for Pupil Injuries," National Education Association, A Report Prepared by The NEA Research Division (Washington: National Commission on Safety Education, National Education Association, 1963).
negligent conduct is judged by the same general legal principles that impose liability on private individuals whose negligence harms others. Because of the relationship that members of the school staff have to pupils, referred to as in loco parentis, there is a legal duty to exercise care to prevent injuries to them.

The evolution of the law of negligence has resulted in the development of a group of elements necessary to the successful maintenance of a suit based on negligence. These elements are, generally, as follows:

"(1) Duty to conform to a standard of behavior which will not subject others to an unreasonable risk of injury.

"(2) Breach of that duty—failure to exercise due care.

"(3) A sufficiently close casual connection between the conduct or behavior and the resulting injury.

"(4) Damage or injury resulting to the rights or interests or another."\(^3\)

What kind of conduct constitutes negligence in the eyes of the law to make a school employee legally responsible for damages? Negligence is any conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm. The standard of conduct is measured against what a reasonable man of ordinary prudence would have

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done in the same or similar circumstances. As one court defined it, a teacher may be charged only with reasonable care such as a parent of ordinary prudence would exercise under comparable circumstances. Whether the particular facts of a case involve negligence on the part of the teacher is a question the jury decides.

In general, negligent conduct is one of two types, action which a reasonable man would have realized involved an unreasonable risk of injury to others, or failure to do an act which is necessary to protect or assist another and which one is under a duty to do. Negligence in each case is determined by the particular circumstances involved. In order to establish negligence, it must be shown that the conduct complained of is the "legal" or, as it is otherwise known, the "proximate cause" of the injury.

Pure accidents. Not all injuries suffered by pupils are due to negligence. Some injuries are caused by misadventure or pure accident; that is to say, no individual is legally at fault. The accident occurs without negligence. It could not have been avoided under the circumstances by the exercise of reasonable precautions.

The line of demarcation between a pure accident and an injury caused by negligence is sometimes difficult to draw. For example, a pupil cut herself when she fell off a chair she

was standing on to water a plant. Although the teacher permitted the child to use a milk bottle to water the plant and allowed her to climb upon a chair to do so, the teacher was not held liable. The court said the teacher could not have been expected to foresee that the child would fall off the chair or that the milk bottle would break and cut her.  

Test of foreseeability. As already stated, the standard of care the law expects one to exercise to protect others from unreasonable risk of harm is that which a reasonable and prudent man would employ in the circumstances. The test of determining whether one's conduct was proper or negligent is that of "foreseeability." In situations where a reasonable and prudent person could have foreseen the harmful consequences of his action or inaction, an individual who disregards the foreseeable consequences is liable for negligent conduct. If the accident or event is one that a person of ordinary prudence in the reasonable exercise of care would anticipate, failure to take the necessary precautionary steps is negligence. Thus, a teacher could not reasonably foresee the latent danger that a paper bag would contain a broken soda bottle and that the pupil whom she asked to pick up the bag would cut herself.  

But a school district was held liable for injuries suffered by a nine-year-old girl when an old upright piano set on casters

which she and other children were moving tipped over. Permission had been granted to use the schoolroom where the accident occurred. The piano, a top-heavy instrument, had been placed with its keyboard side against a wall, with just enough space for a small child to squeeze through. The court said it was foreseeable that some child or group of children would want to use the piano and would try to move it. Consequently, reasonable minds could conclude that it was negligent for anyone to leave the piano in such a position where it might overturn if moved.  

**Contributory negligence.** Although pupil injuries may be found to be due to the teacher's negligent conduct, there may be available to the teacher one or more defenses to relieve him of liability. Among these is the defense of contributory negligence. Reasonable self-protection is expected of all sane persons. The law defines contributory negligence as conduct on the part of the injured person that falls below the standard to which he should conform for his own protection and which is a legally contributing cause, cooperating with the negligence of the defendant in bringing about the harm the injured person complains of. Minors are not held to the same degree of care for self-protection as are adults. The standard required of a child depends upon his intelligence and maturity as an individual and the degree of care which the average child of his age would be expected to exercise.

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**Assumption of risk.** A teacher may sometimes raise the defense of assumption of risk in order to exonerate himself of liability for negligence in a pupil injury action. Assumption of risk is a legal doctrine which presupposes that despite a relation or situation known to be dangerous, a person appreciating the danger involved voluntarily chooses to enter upon and remain within the area of risk. Pupils engaging in certain school activities, like athletics, assume the normal risks involved. A high school freshman in a compulsory physical education class fell and broke his arm when he made a leap-frog jump over a gymnasium horse. The teacher had instructed this pupil and the others in class on how to use the horse, had demonstrated the jump, had warned them of possible dangers, and had told them not to try to jump if they did not think they could do it. Since the pupil knew of the danger involved and assumed the risk, the teacher was not held liable for the injury. 8

Responsibility for Injuries to Pupils

**School districts.** The great majority of states still cling to the archaic doctrine that "the King can do no wrong"—the King being the state or a corporate subdivision thereof, including school districts. Under this doctrine, school districts are immune from tort liability for injuries 8

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suffered to pupils. This immunity applies to their own negligent acts, as well as to the negligent acts of their officers and employees, or for injuries arising from dangerous or improper care and maintenance of school buildings and grounds, defective appliances, or unsafe operation of the school transportation system.

However, the courts and/or the legislatures in a number of states have attempted to resolve or partially resolve the problem by: (1) abolishing the immunity of school districts; (2) enacting legislation which permits districts to purchase liability insurance; (3) enacting legislation which permits districts to purchase liability insurance protecting employees of the districts during scope of employment; (4) enacting "save harmless" statutes; and (5) legislating methods of recovery other than common tort law. The following states have abolished governmental immunity of school districts: Alaska, Arizona, California, Hawaii, Illinois, Minnesota, Washington and Wisconsin.9

The reasoning behind this change in policy from a judicial point of view is well expressed by Justice Traynor as follows:

Policy changes in judicial views of charitable immunity afford an appropriate analogy for illustrating the reasons that the doctrine of governmental immunity should no longer be applied to school districts. Charity immunity was justified in order to protect the assets of a charitable institution normally to be used for public

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9Leibee, op. cit., p. 27.
purposes. But the doctrine has recently received judicial scrutiny. . . . After a re-evaluation of the rule of governmental immunity from tort liability we have concluded that it must be discarded as mistaken and unjust. This shift has been realized not only because of reaction to uncompensated injury but also awareness of another consideration—insurance. Wherever there is widely held insurance, tort liability no longer merely shifts a loss from one individual to another but it tends to distribute the loss according to the principles of insurance, and the person nominally liable is often only a conduit through whom this process of distribution starts to flow. . . . Insurance makes it possible to protect a charitable institution's or municipality's assets at a minimum cost, and at the same time permit recovery where an injury has been suffered.10

School districts in Maine currently enjoy governmental immunity under the common law principle. While there are no court cases so stating, the Attorney General's office has supported this theory on at least two occasions. Those opinions were given as follows:

Municipalities are not liable for injuries occurring to persons when those persons are availing themselves of the governmental functions of a municipality. Carrying on a school is such a function.11

I do not suppose there can be much doubt of the proposition that a municipality is not responsible in damages for carrying out its public duties. The driver of the bus, or the private person for whom he was working would, however, be responsible for carelessness resulting in injury to a passenger. The general principle is established by an almost uniform course of decisions, that a public officer, when acting in good faith is never to be held liable for an error of judgment in a matter committed to his determination. All he undertakes to do is to discharge his duty to the best of his ability and

integrity. That he may err in his judgments, or that he may decide differently from what some other person may think would be just, is no part of his official undertaking.12

While there seems to be little doubt of the governmental immunity enjoyed by municipalities or school districts in Maine at this time from tort liability, it should be noted that under the statutes, a transporter (including district-owned school buses) must procure bodily injury and property damage liability insurance in order to secure registration plates.13 Since the courts have generally held that it is illegal for a school district to purchase insurance against an impossible contingency, this particular statute seems to contradict the general legal principle of governmental immunity in Maine.

On the other hand, a 1963 opinion from the Attorney General's office stated the following:

The State is not authorized to expend subsidy to administrative units upon the cost of liability insurance acquired by the units for the protection of teachers.14

Professional employees. School administrators, like teachers, are liable under general principles of tort law for their own personal acts of negligence or wrongdoing. Where their duties call for promulgation of rules and regulations for adequate supervision, failure to do so may be cause for a

13Maine, Revised Statutes Annotated (1964), Title 29, Sec. 832.
charge of negligence. Thus, an acting principal was held to be negligent when a pupil was injured on being struck by a bicycle ridden by another pupil. The negligence was based on lack of proper supervision of young children on school grounds and failure to adopt rules and regulations for their safety.\textsuperscript{15}

Liability is not usually imposed on an administrator for wrongful or negligent acts of a subordinate. No employer-employee relation exists between the administrator and the subordinate employee, even though the administrator may hire teachers and other school employees and supervise their activities. The school board is the employer. However, the administrator would be liable for the negligence of his subordinate if he employed the subordinate knowing him to be incompetent, or if the administrator directed the subordinate employee to do some act which was in itself dangerous to pupil safety and resulted in pupil injury.

Schoolteachers. The relationship between pupils and teacher is much closer than between pupils and administrator. It has been said that the responsibility for preventing pupils from injuring each other rests upon the teacher in charge rather than upon either the administrator or the school committee; and that the responsibility of the school committee and the administrators ends when competent teachers are selected, the responsibility thereafter resting upon the

\textsuperscript{15}Selleck v. Board of Education, 94 N.Y.S. (2d) 318 (1949).
teachers concerned. Even when a teacher has been given authority to conduct some activity which results in pupil injury, the administrator who gave permission is not legally responsible if the classroom teacher was competent, and the administrator ascertained that the teacher would be present during the activity.

Injuries are sometimes inflicted on one pupil by another or on the playground or in the classroom while the teacher is present. Or this may occur during unsupervised moments while the teacher is attending to duties elsewhere. Under what circumstances will the teacher's lack of supervision constitute negligence? The answer can be stated only in general terms. When the pupil conduct causing the harm is of the kind that the teacher, in the exercise of reasonable care, can neither control nor anticipate, it is unlikely that a charge of negligence will prevail.

Thus, in a recent New York case the court dismissed a suit against a teacher charged with negligence because a pupil sustained a serious eye injury as a result of a thrown snowball on the school playground. There was a school ruling against throwing snowballs on school property and the teacher had warned her class several times about the rule. The injured pupil was on her way to school when the accident occurred.

The lawyer for the defendant teacher argued that the time between lunch and the beginning of afternoon classes is not a recreation period in the same sense that a school recess is. It would be unreasonable, he claimed, to expect teachers to supervise students at a time when they are not officially in school. To do so would demand that teachers stand outside in the cold watching students at every moment that they were on school property. Such a requirement would be in excess of the normal standard care parents themselves might exercise in supervising their own children.

The lawyer for the plaintiff pupil argued, on the contrary, that authorities must accept this responsibility. As long as there is snow on the ground, there are bound to be some children who will throw snowballs. The fact that the school authorities had passed a rule forbidding snowball-throwing on school grounds indicated that they recognized the danger of this activity and that it was their responsibility to prevent it. Such a rule could have no effect unless it were constantly enforced. Moreover, he argued, as long as the school knew that students regularly returned to play in the school yard after they had finished lunch until the time afternoon classes began, that period was as much a recreation period, requiring supervision, as any other recess during the school day. Therefore, he concluded, the school authorities must accept responsibility for the accident.

The court in dismissing the case said it would constitute "an undue burden on the school" to expect "teachers
to enforce the rule against throwing snowballs by standing outside in the cold to watch to see that children do not violate the rule as they come into school." Active intervention of teachers could be expected only when notice of a "special danger" existed. There was no evidence of such special danger here.\(^{18}\)

For how long can a teacher leave a classroom unsupervised without being considered negligent? Absence for a few minutes is not likely to be interpreted as negligent lack of supervision, especially if the teacher's absence was connected with the performance of duty. It has been held that the temporary absence of a teacher from the classroom did not render the teacher, the school principal, or the school board liable to a pupil who was struck in the eye by a pencil thrown by a classmate.\(^{19}\)

**Student teachers.** The law of negligence as it pertains to student or practice teachers is very vague. Until just recently in Maine, the student teacher had no legal status in the classroom and it was presumed that her immediate supervisor, the supervising teacher in whose charge she had been placed, would be held responsible for her acts.

Due to a new policy ruling by the State Board of Education, student teachers from the teacher-training


institutions in Maine are now classified as substitute teachers under the sixty-day permit rule and can presumably be held responsible for injuries occurring to pupils as a result of their own negligence. This new policy has not yet been tested in the courts, nor has the Attorney General been asked to rule on the legality of the policy.

Other employees. The pupil can always seek redress from the individual personally responsible for negligently causing him injury, be he a teacher, an administrator, a bus driver, or any other school employee. The same general principles of law apply to cafeteria workers, custodial workers, and any and all other employees of the school district.

As might be expected, the great majority of court cases involving negligence on the part of other school employees has centered around school bus drivers. There are no Maine court cases of record on this point. Your attention is directed, however, to the Attorney General's opinion quoted earlier in this chapter which stated that a bus driver can be held responsible for negligence resulting in injury to a passenger.

Litigation

The only case to reach the Maine Supreme Judicial Court concerning negligence was Brooks v. Jacobs in 1943. In this

case the plaintiff, a twenty-year-old Madison High School senior, was seriously injured when a temporary staging, from which he was clearing snow, collapsed and threw him to the ground. He had sought and had been granted permission from the defendant, an industrial arts teacher, to shovel off the staging.

The instructor was in charge of constructing a new shop building for use by the school. Several shop classes were helping with the work on a voluntary basis and with their parents' permission. The school committee had authorized the construction of the building and authorized the employment of the boys in the shop classes, there being no compensation for the work, but such work to count for credit in the manual training course.

This was an action to recover for injuries to the plaintiff alleged to be due to negligence on the part of the defendant. The plaintiff argued that the defendant, in taking on and having full charge of the erection of the building, assumed the duty to use due care and proper precaution to prevent injuries to his pupils used in such work. He argued further that the instructor was negligent in failing to provide a suitable and safe staging, in failing to have the staging properly constructed, and in failing to cause it to be properly maintained. Finally, it was argued that the instructor should have been able to foresee the possibility of the staging collapsing with the extra weight of the snow.
The defendant's main defense was that the construction of the building was under the control and direction of the school committee and the superintendent, who had obtained a number of teachers besides himself, who, with their own classes, had assisted in the construction of the building. He claimed to have no authority over those in the other classes and also claimed no personal act of negligence.

In finding for the plaintiff (the high school senior), Judge Hudson made a number of observations which still serve as guidelines in Maine in the area of negligence. Excerpts from the opinion follow:

The relationship of teachers to their pupils has been stated to be in the nature of in loco parentis. We find no Maine case directly so holding, but language in Patterson v. Nutter, 78 Me. 509, 7 A. 273, so denotes, as therein it is said: "He is placed in charge some times of large numbers of children. . . . He must govern . . . and control. . . ." In the Patterson case, supra, is cited State v. Pendergrass, 2 D. & B. (N.C.), 365, in which this statement is made: "The teacher is the substitute of the parent. . . ."

. . . . But apart from the teacher-pupil relationship, there is a common-law obligation that every person must so act or use that which he controls as not to injure another.

The plaintiff's claim is that the superintending school committee put the defendant with his consent in full charge of the erection of this building with the right to make use of his pupils in that work unless they objected, over whom he had control and direction, and so as a matter of law he was duty bound "to use due care and proper precaution" so that no negligent act of his, either of commission or omission, should proximately result in injury to them.

Whether the defendant in fact took on the erection of this building and had full charge thereof was a question of fact for the jury. If he did, we think that he assumed the duty as stated in the plaintiff's contention, with the result of liability if he failed in the discharge of that duty either by misfeasance or nonfeasance, provided such
failure were the proximate cause of the injuries received by the plaintiff.

... I am requested to say that the fact that the defendant was a manual-training schoolteacher cannot shield him from the consequences of his own negligence. That is what is requested. I say he has a responsibility; a limited responsibility. He is responsible for his own acts; not the act of others.21

Current Status Around the Country

Until recent years, only three jurisdictions, California, New York City, and Washington had abolished governmental immunity of school districts from tort liability. In March of 1959, the Supreme Court of Illinois rendered one of the most important decisions of the present century in this field in holding that the doctrine of governmental immunity was abrogated in the state. In Molitor v. Kaneland Community Unit School District, the court said in part:

... [T]he whole doctrine of government immunity from tort rests upon a rotten foundation. It is almost incredible that in this modern age of comparative sociological enlightenment and in a republic the medieval absolutism of "the King can do no wrong" should exist. The revolutionary war was fought to abolish the divine right of Kings.22

A highly significant fact in this case is that governmental immunity was abolished by judicial decision—not legislation—a point which many state supreme courts had previously stated was a matter for the legislature only. Since March of 1959, the states of Arizona, Hawaii, Minnesota, and Wisconsin have

21Ibid.
abolished the doctrine.

Current practice in the several states can be classified roughly into six categories as follows: (1) states in which governmental immunity of school districts has been abolished, of which there are eight; (2) states in which school districts may purchase liability insurance to protect the districts against claims arising from negligent acts for which the districts are responsible at least to the extent of the policy, of which there are sixteen; (3) states in which school districts may purchase liability insurance protecting their employees against claims arising out of employees' negligence, of which there are fourteen; (4) states in which school districts "save harmless" their employees from claims arising out of the employees' negligence by paying claims awarded against the employee, of which there are seven; (5) states which have legislated a method of recovery other than common tort law action, of which there are three; and (6) states in which state education associations have purchased liability insurance protecting members for negligent acts committed during the scope of their employment, of which there are at least seventeen. Maine is currently classified in group six or the last category described above.23

Summary

It appears to be generally accepted that the rule of

immunity of school districts, school committees, boards of directors, or other agencies in charge of public schools ordinarily does not extend to their agents or employees, or other persons under contract with such public bodies, in the absence of a statute providing otherwise. Therefore, the rule has been applied or recognized that teachers in a public school, school bus drivers, and other school employees are personally liable for their own negligence.

If a school employee fails to exercise the duty of care expected of reasonably prudent persons in the same or similar situations, that person is said to be negligent; and if such negligence is the direct and proximate cause of injuries sustained by pupils to whom such an employee owes a duty of care, that employee is personally responsible for damages.

In determining personal liability, there are generally three main questions involved, namely: (1) Did the school employee owe a duty of care towards the injured? (2) Was there a failure on the part of the employee to observe such duty? (3) Was such failure the direct and proximate cause of any resulting injury?

In the determination of whether or not a school employee is normally prudent, the courts will examine the following factors: (1) Did the employee exercise reasonable and adequate supervision for the safety and welfare of the pupils? (2) Did the employee foresee, or should the employee
have foreseen the possibility of the child's being injured?

(3) Did the employee point out to the pupil the possible hazards that he might encounter in a particular activity or class, as well as inform him of the necessary safety rules?

Approximately ten years ago the State Department of Education issued a policy statement on the general subject of liability. There appears to have been no changes, either through legislative action or judicial action since that time which would materially change its content and meaning. A copy of this statement is included in Appendix B.
CHAPTER VI

SCHOOL FINANCIAL OPERATIONS

Introduction

A recurrent theme throughout this study has been that of the supremacy of the state in educational matters. This obviously applies in the field of school finance. The state may delegate the authority to finance schools to the local level while at the same time assisting local districts by distributing funds collected on a statewide basis.

In Maine, the legislature, through Article VIII of the Constitution is required to see to it that the local districts finance their public schools. The pertinent part of the Article reads as follows:

... The legislature are authorized and it shall be their duty to require the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools.¹

It was recognized very early in Maine's history that local support alone was not enough to finance education adequately, especially in the poorer districts. As a result, state funds from various sources were authorized to be distributed to all districts.

Local school committees or school directors have the

¹Maine, Constitution, Art. VIII.
authority to determine the amount of money to be raised for school purposes, subject to the voters' approval, and so long as they act within the scope of their statutory authority, have the right to determine how the money will be spent.

In cities operating under a charter from the state, the city council has the authority to fix the total amount of the school budget. This does not necessarily mean that the council may direct an itemized expenditure of the gross amount authorized; the school committee may usually spend the funds approved in any manner and for any purpose permitted by law.

Taxation

The authority of the legislature to impose a general tax upon the property of the state for school purposes is nowhere better expressed than in an Opinion of the Justices of the Supreme Judicial Court of Maine in 1872. A declaratory judgement from the Court was sought by the legislature on the constitutionality of establishing a school mill fund through a general tax on property for the support of public schools. Excerpts from this Opinion have been widely quoted for persuasive argument in virtually all related cases which have followed. Major portions of the Opinion follow:

By the constitution of this state, art. 4, part 3, sec. 1, the legislature has "full power to make and establish all reasonable laws and regulations for the defense of the people of this state, not repugnant to this constitution, nor to that of the United States."

2Opinions of Justices, 68 Me. 582 (1872).
In the constitution, it is declared that a general diffusion of education is essential to the preservation of the liberties of the people. By its very language, it would seem that the "general diffusion of education" was to be regarded as especially a "benefit" to the people. If so, then the legislature has "full power" over the subject matter of schools and of education to make all reasonable laws in reference thereto for the "benefit of the people of this state." The power existing, its reasonable exercise, having due regard to the several provisions of the constitution, is subject only to legislative discretion.

The power of taxation "for the defense and benefit of the people" is limited only by the good sense and sound judgment of the legislature. If unwisely exercised, the remedy is with the people. It is not for the judicial department to determine where legitimate taxation ends, and spoliation by excessive taxation begins.

Education being of benefit to the people, and taxation being incidental and essential to its successful promotion, the mill tax, being for educational purposes, must be regarded as constitutional.

By article 8, "to promote this important object"—education—"the legislature are authorized, and it shall be their duty to require the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools." But this article is mandatory, not prohibitory.

It imposes duties upon the legislature. It is affirmative, not negative in its character. The legislature cannot avoid the discharge of this duty. It cannot constitutionally absolve the towns from making at their own expense suitable provision for this primary and indispensable foundation of all good government. The legislature are by proper enactments to require the towns to make suitable provision for the support of public schools, and the towns are, at their own expense, to comply with those enactments. Neither can escape from the performance of their several and respective obligations.

But what is making "suitable provision" by the towns, "at their own expense, for the support and maintenance of public schools?" By whom is the amount for that purpose to be fixed? Not by the towns; for, if left to them, there would be no uniform and definite rule. The "suitable provision" in such cases would be a variable quantity, an indefinite and contingent provision, dependent upon the varying wealth of the respective towns and upon the fluctuating views of their voters. It is manifest that a general law upon the subject is required. Accordingly, from the first institution of the government to the present day, the general control of schools, and the determination of what shall be a suitable provision by the towns for
their support, has been fixed by legislative enactment.

A "suitable provision" must be one general in its character, and having regard to all the people of the state, in the aggregate. A "suitable provision" is not necessarily a sufficient provision. A sufficient provision must be one adequate to meet the educational demands of the people. It may therefore become necessary to supplement what is a suitable provision by adding thereto what will make it a sufficient one. Have, then, the legislature the right to do this? There is no express prohibition to their so doing. The right to do so exists by art. 4, p. 3, sec. 1, and no prohibition to the contrary is to be found in art. 8.

The tax in question is like that for the support of government. It is for the benefit of the whole people. All the property in the state is assessed therefore according to its valuation. All contribute thereto in proportion to their means. It is a tax for a public purpose, not one, by which one individual is taxed for the special and peculiar benefit of another.

In relation to the question proposed, we answer that the legislature has authority under the constitution to assess a general tax upon the property of the state for the purpose of distribution under "An act to establish the school mill fund for the support of common schools," approved February 27, 1872.

The Legislature of 1909 created an additional source of revenue by imposing a further state tax of one and one-half mills on the dollar upon all of the property in the cities, towns, plantations and unorganized townships of the State. This was known as the Common School Fund.

At this time the public schools were receiving financial aid from two separate sources, state aid and direct municipal taxation. The state aid itself was derived from four sources: (1) income from the "Permanent School Fund," a fund created by the sale of wild lands appropriated by the state in former years for the support of schools; (2) income from the state tax on savings banks and trust companies; (3) from the School Mill

3Ibid., pp. 582-586.
Tax, so called, derived from assessing all the property in the state situated in cities, towns, plantations and unorganized townships; and (4) the newly-enacted Common School Fund with moneys derived from the same source as the School Mill Tax.

At the local level, municipalities are compelled by the legislature to assist in the maintenance of public schools by taxation. The amount thus required has varied from time to time. There have been many court cases involving local taxation for school purposes in the early history of Maine in connection with the original school district system but these are now of interest only to the historian. The statute of 1909 creating the Common School Fund was almost immediately challenged and resulted in the only court case of record in recent Maine history on the subject of taxation. For that reason this case, Sawyer v. Gilmore settled in 1910 will be reviewed here in some detail.

The statute passed by the legislature read in part as follows:

Sec. 1. A tax of one and a half mills on a dollar shall annually be assessed upon all of the property in the state according to the valuation thereof and shall be known as the tax for the support of common schools.

Sec. 2. This tax shall be assessed and collected in

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4 See Inhabitants of School Dist. No. 1 in Greene v. Bailey, 12 Me. 254 (1835); Trafton v. Inhabitants of Alfred, 15 Me. 258 (1839); Davis v. School Dist. No. 2, 24 Me. 349 (1844); Smyth v. Titcomb, 31 Me. 272 (1850); Lander v. School Dist. in Smithfield, 33 Me. 239 (1851); Tucker v. Wentworth, 35 Me. 393 (1853); Powers v. Inhabitants of Senford, 39 Me. 183 (1855); Trim v. Inhabitants of Charleston, 41 Me. 50 (1856); and Knowles v. School Dist. No. 10, 63 Me. 261 (1874).
the same manner as other state taxes and shall be paid into the State Treasury and designated as the common school fund.

Sec. 3. One third of this fund shall be distributed by the treasurer of the state on the first day of January, annually, to the several cities, towns and plantations according to the number of scholars therein, as the same shall appear from the official returns made to the state superintendent of public schools for the preceding year, and the remaining two thirds of said fund shall be distributed by the treasurer of the state on the first day of January, annually, to the several cities, towns and plantations, according to the valuation thereof as the same shall be fixed by the state assessors for the preceding year.

Sec. 6. Sums received by any city, town or plantation from the distribution provided by section three shall be deemed to be raised by such city, town or plantation within the meaning of revised statutes, chapter fifteen, section thirteen, as amended.5

A Mr. Sawyer, the plaintiff in this case, and a resident of Mattamiscontis, an unorganized township in the County of Penobscot, brought a bill in equity to enjoin the defendant State Treasurer from collecting the new tax. He challenged the constitutionality of the Common School Fund legislation on a number of points. His main arguments were that: (1) the act imposed an unequal burden upon the unorganized townships of the state because the fund was created by the taxation of all the property in townships, towns, cities and plantations, yet no provision was made for the distribution of such funds to townships. In other words, while four subdivisions of the state were made to contribute to the fund, only three were permitted to share in the financial benefits; (2) the method of distribution was unconstitutional because it was made, not

according to the number of scholars, as was the case with the school mill fund, but one-third according to the number of scholars and two-thirds according to valuation, thus benefitting the cities, and richer towns more than the poorer; (3) the act was unconstitutional on the grounds that section 6 permitted sums received from the state under this act to be deemed moneys raised by municipalities for school purposes thus relieving some towns from the necessity of raising the 80¢ per capita under the 1872 statute; (4) while the act required towns to raise a uniform amount per capita, the requirement varied all the way along the line, from nothing up to eighty cents depending upon the state reimbursement and thus an un-uniform rate was established; and (5) that the act violated section 8 of Article IX of the State Constitution, which reads: "All taxes upon real or personal estate assessed by authority of this State shall be apportioned and assessed equally according to the just value thereof"; and the fourteenth amendment of the Federal Constitution, which declares that "No State shall deny to any person within its jurisdiction the equal protection of the laws."

The Court, in holding for the defendant, categorically disallowed each of the allegations. Once again, the judiciary reinforced the doctrine of state supremacy in matters of public education. Pertinent quotes from the decision follow:

The first objection was that this act imposed an unequal burden of taxation upon the unorganized townships of the state. . . . [T]his objection is without legal foundation. The legislature has the right under the
constitution to impose an equal rate of taxation upon all the property in the state, including the property in unorganized townships, for the purpose of distributing the proceeds thereof among the cities, towns and plantations for common school purposes, and the mere fact that the tax is assessed upon the property in four municipal subdivisions and distributed among three, is not in itself fatal. ... The fundamental question is this, is the purpose for which the tax is assessed a public purpose, not whether any portion of it may find its way back again to the pocket of the taxpayer or to the direct advantage of himself or family. Were the latter the test, the childless man would be exempt from the support of schools and the same and well from the support of hospitals. In order that taxation may be equal and uniform in the constitutional sense, it is not necessary that the benefits arising therefrom should be enjoyed by all the people in equal degree nor that each one of the people should participate in each particular benefit. Laws must be general in their character and the benefits must affect different people differently.

This is the legal and constitutional answer to the plaintiff's claim of inequality but in this connection it should not be overlooked that the legislature has in fact made wise and generous provision for the education of children in the unorganized townships, more generous in fact than in the case of children in incorporated places.

... It was thus established that it is constitutional to tax one subdivision of government to aid another subdivision of government as long as the purpose is for the common good of the state. In answering the question of inequality of distribution the Court said:

The plaintiff further attacked the method of distribution as being unconstitutional because it is made, not according to the number of scholars, as is the school mill fund, but one-third according to the number of scholars and two-thirds according to valuation ... but that result is not the test of constitutionality. Inequality of assessment is necessarily fatal, inequality of distribution is not, provided the purpose be the public welfare ... The method of distributing the proceeds of such a tax rests in the wise discretion and sound judgment of the Legislature. Such distribution might be according to population, or according to the number of scholars of school age, or according to school
attendance, or according to valuation, or partly on another. The Constitution prescribes no regulation in regard to this matter and it is not for the court to say that one method should be adopted in preference to another. We are not to substitute our judgment for that of a coordinate branch of the government working within its constitutional limits.

The legal principle was here established that while the assessment and collection of funds must be equitable, the method of distribution may be determined in any manner which best provides for the common welfare. Thus, the legislature may, if it so desires, distribute a larger percentage of funds to the poorer districts. This is not now the case in Maine but a new method of state aid now under consideration would do just that. This proposal will be described later. In answer to the third allegation the Court said:

The constitutionality of this act is assailed on another ground in that Section 6 permits sums received from the state under this distribution "to be deemed to be raised by the municipalities within the meaning of R.S., Ch. 15, Sec. 13, as amended," thereby relieving them from raising by municipal taxation for school purposes the not less than eighty cents for each inhabitant.

In this respect this common school fund act of 1909, differs from the school mill act of 1872. The act of 1872 does not afford such relief because the towns are still required to raise their eighty cents per capita tax, and the amount received by the towns from the mill fund is additional thereto. But the act of 1909 permits the amounts apportioned thereunder by the State to the several towns to be applied towards the per capita tax, so that under this act some towns are wholly and others, partially relieved from such taxation. This it is claimed, contravenes Art. VIII of the State Constitution.

What is the fair construction of this clause? What force has it as a part of the organic law of the State? A legislative act is to be held constitutional unless a positive restriction or limitation or prohibition can be found in the Constitution which renders it invalid. No such limitation or prohibition in regard to the maintenance of the common schools can be found.
This part of the opinion is now of historical interest only. School costs have risen to the extent that state aid accounts for far less than the actual local expenditures per pupil. In answering the fourth allegation of an un-uniform tax the Court said:

It is an historical fact that in the early days the towns had frequently neglected to make such provision and therefore the framers of the Constitution left no room to doubt that the Legislature should have the power to require them to do their duty to the end that the children and youth of the State should be properly educated. But the provision is nothing more than mandatory.

And in the second place the extent of the requirement is left wholly to the discretion of the Legislature, because their duty is to require the several towns to make "suitable" provision. Who is to determine what is suitable? Clearly the Legislature itself. "Suitable" is an elastic and varying term, dependent upon the necessities of changing times. What the Legislature might deem to be suitable and therefore necessary under some conditions, they might deem unnecessary under others. The amount which the towns ought to raise would depend largely upon the amounts available to them from other sources, and as these other sources increase the local sources can properly diminish.

Towns are mere agencies of the State. They are purely creatures of the Legislature and their powers and duties are within its control. Hence it lies in the power of the Legislature not merely to pass laws applicable to all towns but it may direct its attention to the need of a particular town and compel such town to raise money by taxation. . . . In the light therefore, of these decisions and in view of the language of the Constitution and of the first legislative act passed in accordance therewith, we have no hesitation in saying that although the Act of 1909 may relieve a few towns from any local taxation whatever for public schools, that is a matter which may be considered by the Legislature in the performance of their duty but does not of itself, in the absence of any restrictive constitutional provision, render the act unconstitutional and void. . . .

The legal principle is here again established that the legislature may require towns to raise any amount deemed necessary for the support of schools and can, in fact, require a
single town to make more of an effort by way of taxation than another. In answering the final allegation of violation of the Fourteenth Amendment, the Court said:

The final allegation which charged a violation of the Fourteenth Amendment of the Federal Constitution can be answered in a single word. "The provision in the Fourteenth Amendment that no state shall deny to any person within its jurisdiction the equal protection of the laws was not intended to prevent a state from adjusting its system of taxation in all proper and reasonable ways." Our conclusion therefore is that Chap. 177 of the Pub. Laws of 1909, violates neither the State nor the Federal Constitution.6

Thus, in this landmark case the Court reaffirmed the concepts established in the 1872 Opinion of the Justices, namely, that the legislature has the authority to require towns to impose taxes to make "suitable" provision for public schools; that the legislature may establish a statewide tax to supplement the local taxes for school purposes; that such taxes, if applied uniformly throughout the state, are not illegal because some towns are relieved of part or all of their local taxes; and that the legislature may direct its attention to a single town and compel it to raise money by taxation to meet the "suitable provision" clause.

In concluding this section on taxation, a word on the current status might be in order. In Maine, as in most states, the local share of educational funds is raised through the property tax. There is general agreement that this method is inadequate or at least promotes unequal educational opportunities.

6Ibid.
for the youth of Maine. The "wealthy" towns of Maine have 13 percent of the state's valuation and only 5 percent of its children. Figures on individual towns present some striking contrasts. Baileyville in 1966 had $73,000 in fair market value for every school child; Wiscasset had $75,000. In contrast Beals Island had $5,800 and Gorham had $12,000. To compound the inequity, the state pays a minimum of 20 percent of the cost of the foundation program in every community in the state, regardless of how much taxable property lies within its borders.

A new plan is now under study which would eliminate these inequities. Under this plan, the state would set a mill rate to be raised for education and then make up the difference between the yield of this tax and the foundation program. As an example, if the levy was ten mills and wealthy town X could satisfy the foundation program with only six mills, the surplus four mills would go into the state fund to aid poor town Y.

Gifts and Bequests

Chapter 113, Sec. 1285 of the Revised Statutes of 1954 reads in part as follows:

... Administrative units shall receive in trust and

8Ibid., p. 15.
faithfully expend gifts and bequests made to aid in the maintenance of free high schools, and shall receive aid in such cases to the same extent and on the same conditions as if such schools had been established and maintained by taxation.\(^9\)

Chapter 103, Section 851 reads in part as follows:

\[\ldots\] Every administrative unit shall raise and expend, annually, for the support of public schools therein, exclusive of the income of any corporate school fund, or of any grant from the revenue or fund from the State, or of any voluntary donation, devise or bequest, or any forfeiture accruing to the use of the schools, not less than \(80\/\) for each inhabitant.\(^10\)

Two cases have reached Maine's highest court on the question of gifts and bequests. The first occurred in *Piper v. Moulton* in 1881.\(^11\) Mr. Elisha Piper, a resident of Parsonsfield, in York County, willed the major portion of his estate to the Town of Parsonsfield for educational purposes. The will provided that a school fund be set up for the support of a high school in Parsonsfield, provided that the town would build such a school.

The will was contested by the plaintiffs, who incidentally, included Mr. Piper's wife, on the basis that the Town of Parsonsfield had no authority to support or aid in supporting a high school. As pointed out in the will, no part of the bequest was to be used for the construction of a school. The town, not having a high school, would be forced therefore to build one in order to benefit from the bequest.

\(^9\)Maine, Revised Statutes (1954), c. 113, sec. 851.
\(^10\)Ibid.
\(^11\)Piper v. Moulton, 72 Me. 155 (1881).
In settling the question of whether the Town of Parsonsfield had the right to accept the school fund and build and support a free high school, the Court said the following:

A trust for the support of schools or of a particular school as a high school, or for any purpose of general public utility is a valid trust. So towns can hold property in trust for purposes within the general scope of their corporate existence. . . . It is provided in the will, that the school house for the Piper free high school shall be built and maintained by the inhabitants of Parsonsfield. It is objected that they cannot legally raise money for the purpose of erecting such school house, or to pay the town treasurer and committee for their care of the bequest made to the town.

By R.S., c. 11, sec. 5, as amended by statute 1878, c. 20, every city, town and plantation shall raise and expend annually, for the support of schools therein, a sum of money exclusive of the income of any corporate school fund, or of any grant, or from the revenue or funds from the state, or of any voluntary donation, devise or bequest. . . . The minimum tax only is established. It may be increased for educational purposes to any extent that may be deemed advisable. No limitation is placed upon the sum to be raised but the good judgment of the inhabitants raising it.

That a city or town may receive money by devise or bequest, is fully recognized by this section. The gift becomes the property of the town, to be used for the purposes for which it was given. . . .

The town has accepted the gift. It is bound to furnish the requisite buildings. There must be a reasonable time for that purpose. When executors or trustees are to pay a legacy to a corporation on conditions precedent, and no time is stated in the will, five years from its probate is allowed for their performance.12

A second and much more recent case involving a bequest reached the Maine Supreme Judicial Court in 1952. The results of this action have particular implications for some of the

12 Ibid.
smaller schools in Maine currently considering consolidation under the Sinclair Act.

In Guilford Trust Company v. LaFleur, the facts are briefly as follows. A Mr. William Appleyard, late of Guilford, died on March 19, 1950, leaving a will duly probated in the County of Piscataquis. The residue of his estate amounting to approximately $20,000 was left in trust with the plaintiff, Guilford Trust Company, under the following conditions: that the trust be used for the sole benefit of Guilford High School; and that the funds not be used in any way to save the Town of Guilford anything by way of taxes that would normally be raised for the support of the high school were the trust not created.

In June, 1949, prior to Mr. Appleyard's death and with his knowledge, the Towns of Guilford, Sangerville, Abbott and Parkman formed a Community School District known as the Piscataquis Community School District. The Town of Guilford executed a lease of its high school building to the newly formed District and the possession of the building was delivered to the Trustees of the District and accepted by them. The curriculum and other matters pertaining to the education of scholars were under the control of the Community School District Committee with representatives of each of the member towns while the responsibility for the physical maintenance and operation of the building were under a Board of Trustees.

It will be recalled from Chapter IV that under the Community School District legislation (still in effect) there are two distinct groups with differing responsibilities in such districts, the trustees being responsible for all of the affairs of the district, except election of teachers, the courses of study, the terms of school and other matters pertaining to education, which matters shall be controlled by a community school committee.

The defendant in this case, a Mrs. Iva A. Maginnis, sole heir-at-law, maintained that the will was null and void and that the residue of Mr. Appleyard's estate rightfully belonged to her. Her lawyer based his arguments on the following points: (1) that because Guilford High School ceased to exist before the death of Mr. Appleyard, the trust for benefit of Guilford High School lapsed; (2) that the intended bequest was a specific and restricted charitable bequest and not a general public charitable request for general educational purposes and could not have been applied cy pres for the benefit of any public educational charity other than the Guilford High School; and (3) that at the date of Mr. Appleyard's death that Guilford High School was not an

\[1^4\] cy pres means "The equitable doctrine that if a charitable trust cannot be enforced according to its exact tenor, the trustee may petition to have it enforced in some approximately similar way that will carry out the general purpose of the charity." Max Radin, Radin Law Dictionary (Dobbs Ferry: Oceana Publications, Inc., 1965), p. 82.
existing entity and the grade school at that time was under
the control and an integral part of the Piscataquis Community
School District for benefit of scholars in four different towns.

In finding for the plaintiff and dismissing the appeal
the Court said in part:

The argument of the heir comes to this and no more; that because the town of Guilford has entered a community
school district and not alone but with three other towns
maintains a high school, therefore a gift for benefit of
the high school scholars must be lost. The same young
men and women who, if they were attending the Guilford
High School would be benefitted by this gift, must, says
the heir, lose it because they now attend the high school
of Piscataquis Community School District.

. . . Guilford High School we may well assume was the
official secondary school of Guilford. The community
school is now the official secondary school of Guilford.
It is this school which the taxpayers of Guilford support
and it is this school that the children of Guilford have
the right to attend.

The intent of Mr. Appleyard to enlarge and broaden
educational facilities for the youth of Guilford in a high
school seems clear. He carefully provided that the income
should not be used to relieve the town of its normal burden
of expense for educational purposes.

We have no weight to the fact that the new high school
is physically located in the buildings formerly occupied
by the Guilford High School. There is nothing in the will
of Mr. Appleyard to indicate that his gift was limited to
an institution at a particular location. The point is that
the present high school, wherever located, is in fact and
law the official secondary school of Guilford, and it is
this school, whatever its name, which the testator had in
mind in naming the Guilford High School.

We need not on the narrow ground here urged by the
heir deprive the testator of his right to give, or the
youth of Guilford of their right to enjoy, the increased
educational advantages made available through his
generosity. To say that the gift must fail because of
the change of name and the extension of the area supporting
the school would, in our view, give undue weight to a
relatively unimportant matter.15 (Italics mine)

15 Guilford Trust Company v. Alexander A. LaFleur, 148
Me. 162 (1952).
Indebtedness

The authority of a municipality or a school district to incur indebtedness for the repair, alteration or construction of school buildings is well established. In many states the amount of indebtedness which may be incurred by school districts is limited by constitutional provision or statutory enactment. Such is the case in Maine. From time to time, especially when two or more towns unite for school purposes, questions have arisen as to whether the indebtedness of the school union or district is that of the separate towns combined or independent of the towns.

Although there are no court cases of record on this particular point in Maine, a recent and authoritative opinion was rendered by the Justices of the Supreme Judicial Court in 1958.17

They said in effect that, (1) a school administrative district is separate and distinct from the municipalities participating in its creation and that the indebtedness, therefore, of a school administrative district is not the indebtedness of the municipalities included; and (2) that the limits of indebtedness of a school administrative district are not the same as those of cities and towns; the limitation on municipal indebtedness applies to cities and towns and not to


other entities, or, as here, a school administrative district.

School Budgets

The desirability of some form of budgetary procedure for public schools has long been recognized. There has never been dissent from the premise that school expenditures can be made more effectively when available funds are apportioned among the various items necessary for the efficient conduct of the school system.\(^{18}\)

As might be expected, the question of final responsibility in the approval of the annual school budget has resulted in much litigation around the country. School committees in Maine, unlike some jurisdictions, are fiscally dependent upon the wishes of the taxpayers. Final approval of the school budget rests not with the Committee but with the voters of the towns, or of the several towns in a district, or with the city council under the charter system.

Strangely enough, there are no recorded cases in Maine challenging this authority. On the other hand, this has been a subject of considerable controversy in other states.\(^ {19}\) There have been three court cases in Maine which have incidentally touched on the question of the authority of establishing the


\(^ {19}\) See Board of Education of Town of Stamford v. Board of Finance of Town of Stamford, 127 Conn. 345, 16 A. (2d) 601 (1940); and Lynch v. City of Fall River, 336 Mass. 558, 147 N.E. (2d) 152 (1958).
school budget. While it is recognized that the final authority rests with the voters, it is appropriate to include summaries of these cases at this point. In the first of these cases, *Burkett v. Youngs*, a taxpayer and voter of the City of Bangor attempted to force the city council to refer, by referendum, for the local electorates' acceptance or rejection, the general appropriation resolve which included the school budget. In denying the right of referendum the Court said in part:

... the Legislature defines, in minimum requirement, what amount of money must be raised and expended by a city for common schools. ... Some of the appropriations are, under state law, obligatory on the city: for illustration, common schools ... the public school system is of statewide concern. The state at large is equally concerned with the city regarding education, the support of the poor, the construction and maintenance of highways, the assessment and collection of taxes, and other matters.21

Here again, is established the legal principle that the public schools are a state function and of statewide concern. Therefore, no individual city or town can refuse to raise the minimum amount for education established by the legislature.

The second case questioned the authority of a city council to fix the total minimum expenditures of the school committee. While the decision in this superior court action is not necessarily binding upon the Supreme Judicial Court, should a similar case reach its docket, there is no good reason to suppose that a similar line of reasoning would not be used. The implications of this very recent decision (1965) are of

sufficient import to Maine school authorities that the entire text of the case is included in Appendix C. For this reason, only the basic findings of the case will be here reported.

The basic controversy centered around the legislative intent as to the meaning of the language, "management, care and conduct" of the public schools as vested in the school committee by statute. Does this give the school committee the right to establish the annual operating budget or must the school committee exercise its authority within the limits of the total school appropriation as set by the city council under its charter?

In City of Auburn v. John B. Annett, Justice Sullivan concluded that the Auburn City Council had the final authority to fix the total maximum expenditures of the Auburn School Committee.

In school administrative districts the legislature has given to the directors the duty and power of preparing the school budget but that budget must be approved by the majority of voters of the district at separate meetings of member towns. There is a further proviso that the budget becomes automatically approved as of April 1 in any given year absent any majority veto of the aggregate voters. As pointed out in Chapter IV, this means that no one member town, by a negative vote, can veto the district budget unless the aggregate vote fails to

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22 City of Auburn v. John B. Annett (Superior Court, April 29, 1965).
sustain a two-thirds majority of all of the voters in all of the member towns.

This point was considered in the third and final case on school budgets in this section. In a case already reviewed, Blackstone v. Rollins, the plaintiff, among other things, alleged that a meeting called by the directors on February 16, 1959, to review the operational budget was illegal since no voting list was used. This was not a meeting to approve the budget but rather an "open hearing" on the budget prior to consideration by the voters of each member town as required under the Sinclair Act. In sustaining the legality of the meeting as well as the budget, Justice Dubord commented as follows:

If a budget for the operation of the school administrative district is not approved prior to April 1st in any given year, the budget as submitted by the school directors for operational expenses, reserve fund and capital outlay purposes shall be automatically considered the budget approved for operational expenses in the ensuing year. . . . [T]his being true, even though there might have been a failure to comply strictly with the provisions of sec. 111, the budget submitted by the school directors, in any event, automatically became the budget for the ensuing year, by force of the provisions of sec. 111-L. 23

Summary

The concept of state supremacy in matters pertaining to public education has been reinforced repeatedly in this study. This chapter has pointed out this plenary power in still another area, that of school finance.

The courts have consistently upheld the authority of the legislature to impose tax programs on a statewide basis for the support of public school education, if uniformly applied, even though local municipalities or school districts may not necessarily receive the same proportionate amount in return. The courts have further upheld the premise that local municipalities must provide, by taxation, at least a minimum amount in the support and maintenance of public schools. If local municipalities choose to raise more than the prescribed minimum, they are free to do so under Maine's Constitution. Furthermore, the legislature has the constitutional right to provide financial aid to a single municipality in addition to the minimum support program, if, in its judgment, the common good of the state is being served.

It has been held that towns or school districts have the right to accept gifts and bequests for the benefit of local schools. Such benefits are not considered to be nullified by virtue of the fact that the specific school mentioned in the will merges with another school as long as the students for whom the original bequest was intended continue to profit from the benefits of the gift.

School administrative units, as quasi-municipal corporations, have the legal authority to incur indebtedness up to 12-1/2 percent of the total valuation of all the participating towns for operation, maintenance and capital outlay purposes. This indebtedness is not that of the town or towns
involved in the school district, but that of the school administrative unit.

In general, school budgets must be approved annually by the voters in independent school systems, by the city council in cities under the charter system, by each member town under the school supervisory union system, or by a majority vote of the aggregate voters in the member towns of a school administrative district. In the latter case, the budget proposed by the directors becomes the official budget if not acted upon by April 1 of the year involved.

While Maine school districts do not enjoy fiscal autonomy, the privilege of the voters at a town meeting of a member town of a school administrative district, to increase, decrease or otherwise modify a school budget as been removed. A negative vote on the total operating budget of a school administrative district by any one member town will not nullify the budget except where the negative vote is a majority vote of all the votes cast in all of the member towns.

Failure of voters to approve a school budget which meets minimum state requirements results in a penalty from the state through the medium of reduced state aid under the state foundation program. Except in a few instances in the very early history of Maine, no town has chosen to ignore the statutes concerning minimum local support for public schools.
CHAPTER VII

SCHOOL PROPERTY

Introduction

School administrative units or their directors have no contract or vested rights in school property. School property, including buildings, grounds and equipment, is the property of the state, and not of the local district, despite the fact that the property may have been paid for solely from funds raised by levies or bond issues at the local district level. School districts hold the property in trust for the state.

Since the legal ownership is in the state, the legislature may control or dispose of such property, with or without the consent of the district or its inhabitants. This concept of the legal nature of school buildings and other property is sometimes difficult for the patrons of local school districts to comprehend. They may be inclined to look upon the property as "their" property, since it was financed with "their" money. Thus, despite the fact that school buildings are constructed for school purposes, various groups often seek the use of school buildings for other than school purposes.

The ownership of school property is ordinarily in the
state or the public, although a school committee may hold the naked legal title as trustee for the public. Such property is not to be considered as the private property of the school district by which it is held or wherein it is located. Generally, school committees or directors are given control of school property and it may not be used for illegal purposes.

Authority to Hold Property

The landmark case in Maine concerning the authority to hold property is the Kelley case which was discussed in a previous chapter. The Court held that:

A school district is a public agency or trustee established to carry out the state's policy to educate its youth, and the Legislature may change such agencies, and control and direct what should be done with the school property.¹

It will be recalled that in this case the legislature authorized the Brunswick School District to borrow money for the purpose of erecting a high school and that, after the loan had been repaid by the district, the property would revert to the school committee of the local school system. The Court also said that, "School property is public property, the property of the incorporated district and not of the taxpayers residing within it."²

In an earlier case, the Court held that the authorities

²Ibid.
of a school district may acquire additional lands adjoining the schoolhouse lot, when necessary for the purpose of an extension which has been duly voted. In the Piper case reviewed in Chapter VI, it was held that a town may accept a trust for school purposes. The Court said in part:

A trust for the support of schools or of a particular school as a high school, or for any purpose of general public utility is a valid trust. So towns can hold property within the general scope of their corporate existence.

Sale or Disposition of Property

As early as 1843, it was held that school districts may make sale of their old schoolhouses which become unfit for the use of the district. Again in 1865 it was noted by the Court that school districts have the authority to sell and dispose of any schoolhouse or other property, if necessary, and that the school district is the judge of the necessity. There are no recent Maine cases on this point but in 1947 the Attorney General ruled that a school committee has no authority to lease school property for interests outside educational activities.

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3 Cousens v. School Dist. No. 4, 67 Me. 280 (1877).
4 Piper v. Moulton, 72 Me. 155 (1881).
5 Whitmore v. Hogen, 22 Me. (9 Shep.) 564 (1843).
Construction of School Buildings

A school committee unquestionably has the legal right to construct buildings to be used for purposes of instruction. In Maine, as in most other states, a state building authority known as the "Maine School Building Authority" has been established to assist local districts for school construction purposes. Its stated purpose is as follows:

A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people; to aid in the provision of public school buildings in the State, the "Maine School Building Authority," as heretofore created, is authorized and empowered to construct, acquire, alter or improve public school buildings and to issue revenue bonds of the authority, payable from rentals to finance such buildings and when paid for by said rentals to convey them to the lessee towns or other administrative units. Thus, new schools, or alterations to existing schools, are financed through revenue bonds by the Authority who "owns" the property and rents the property to the local district until paid for. At this time the title is turned over to the district to be held in trust for the state.

A municipality has no authority to construct a schoolhouse without the express recommendation and approval of the school committee. In Lund v. City of Auburn, the Court held that the City Council of Auburn, under its charter, had no authority to erect a schoolhouse until the plans therefore were

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8 Maine, Revised Statutes Annotated (1954), Tit. 20, c. 503, sec. 3502.
9 Lund v. City of Auburn, 110 Me. 241, 85 A. 893 (1913).
approved by the school committee of the City.

Furthermore, school construction plans must be approved by state authorities. In Maine this includes the State Department of Education and the Bureau of Health. It was held by the Court in 1916 that the superintending school committee and the superintendent of schools cannot bind a town for building a new schoolhouse, contrary to the statutory requirements of approval by state authorities of proposed plans of school buildings.¹⁰

Control and Use

Generally, the use of school buildings or property for purposes other than the conduct of the school is largely regulated by statute. The modern view is that school authorities may permit the use of school buildings for other than school purposes provided there is no interference with the primary use of the buildings for school purposes. The minority view is that the use of school property should be restricted entirely to school purposes on the ground that money raised by taxation for one purpose cannot be used even indirectly for any other purpose.¹¹

Although, as we have seen above, school buildings are

¹⁰Morse v. Inhabitants of Town of Montville, 115 Me. 454, 99 A. 438 (1915).

the property of the state, their management and control are left to the discretion of local boards. The boards are in a better position than anyone else to determine what, if any, use should be made of the school buildings outside of school hours and the conditions and restrictions which should be placed upon that use.

Local school committees are clothed with wide discretion in determining what non-school use shall be made of the school buildings within their districts. Maine has had no cases reach its highest court on this matter to serve as a guideline for school officials. The general rule in other jurisdictions has been well stated by the Supreme Court of Wyoming, however, and is here included. That court has held that so long as the proper maintenance and conduct of the school is not interfered with, or in any wise hampered, and so long as school district property is not defaced or destroyed, the law vests a generous amount of discretion in the school board. It is perhaps accurate to say that there is a strong judicial disposition to approve wide community use of school buildings.

Maine has no statutes regulating the control of school buildings by outside groups and, as stated above, has had no litigation on the subject. Attorney General opinions have been sought on several occasions, however, concerning the

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legality of permitting religious groups to use school facilities for religious training outside of school hours. Attorney General Cowan said in 1943 that:

In my opinion, a school committee in any municipality of this State cannot lawfully permit the use of a public school building by any group for any particular type of religious training. Such, I believe, was the intention of the framers of the State Constitution; and such, I believe, has been the intention of our legislature in all the enactments that it has made since the foundation of our government.

In 1947 the Attorney General's office ruled that subsection one of section 473, giving the management and care of the schools to the school committee, does not include the right to lease school property to outside parties. Again in 1950, Attorney Farris ruled that, in his opinion, it was illegal for a high school to allow the use of its auditorium for Seventh Day Adventist meetings.

School buildings, being public property, and among the largest and sturdiest buildings in most municipalities, are often designated as public shelters in the event of an emergency. An interesting question arose in 1963 as to who would have jurisdiction over public school buildings in the event of a national or state disaster. Attorney General Benoit stated his opinion as follows:

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I find no language in the "Maine Civil Defense and Public Safety Act of 1949" reducing the responsibility of school officials . . . in times of catastrophe or disasters. Though school officials advance the possibility that conflicts of interest might arise between local, county and state civil defense units, none is shown; the plans and programs formulated by these units exist for the purpose of preventing such conflicts from arising. Until the Governor of our State executes the emergency powers prescribed in the Maine Civil Defense and Public Safety Act, responsibility for management of school buildings rest with superintending school committees and school directors. Acts in preparation for emergencies by civil defense officials do not include the exercise of control over school facilities.\(^\text{16}\)

Thus it would appear that while Civil Defense officials might be granted control of public school buildings during an emergency by a directive from the Governor, these officials, in preparing for emergencies, may not assume control of school facilities for the purpose of equipping storerooms, altering basements, etc., unless such authority is granted by the school committee.

School Sites

Location. Ordinarily, the location of school sites is left to the discretion of the board of education. Since this decision is generally left to the judgement of the board of education, the courts will not intervene with action taken by the board unless such action is clearly unreasonable and arbitrary. Thus it was held in Jordan v. Haskell that, "... The location of a school house lot is not invalid, merely because the bounds of the location, by mistake in some

way, overlaps upon a public road."\(^{17}\) In Marble v. McKenney, the Court held that, "Money raised for the erection of a schoolhouse upon a lot other than the one legally designated by the municipal officers of a town is deemed to be raised for an illegal purpose."\(^{18}\) In an earlier decision involving the same parties, Jordan v. Sch. Dist. No. 8 in Cape Elizabeth, the Court stated: "When the location has been legally designated, by the municipal officers, upon the land of a certain person, a jury, on petition of the owner, cannot change the location to the land of another or to that of the district."\(^{19}\)

Finally, an Attorney General's ruling in 1951 held that school district trustees have no authority to select a location and build a schoolhouse without the approval of the superintending school committee of the town and the State Board of Health.\(^{20}\)

Eminent domain. The courts have consistently upheld the legal right to acquire property by eminent domain. Such taking is for the public use. The extent of the land that may be taken is not limited to the amount needed for a school building or buildings and may include such other amount as is necessary for reasonable use by the school, including land for a playground and athletic fields.

\(^{17}\)Jordan v. Haskell, 63 Me. 189 (1874).

\(^{18}\)Marble v. McKenney, 60 Me. 332 (1872).

\(^{19}\)Jordan v. Haskell, 63 Me. 189 (1874), p. 540.

In Goodwin v. Nye in 1872, the Court ruled:

When a location for the erection or removal of a schoolhouse and necessary buildings has been legally designated, and the owner thereof refuses to sell or asks an unreasonable price for it in the opinion of the municipal officers, they may lay out a schoolhouse lot, not exceeding forty square rods, and appraise the damages.21

The right of land-taking for school purposes was confirmed by the Court again in 1877 in Cousens v. Inhabitants of School District No. 4 in Lyman. An excerpt from this decision follows:

... Where the warrant for the meeting of a school district regularly called and holden, and the votes passed at that meeting, taken as a whole, unmistakably show that the district has designated a certain lot of land adjoining the one occupied by their existing schoolhouse to be used in connection with it as a schoolhouse lot for the erection of a new schoolhouse, and the owner of the land refuses to sell the same, the selectmen may lawfully lay it out for a schoolhouse lot and appraise the damages therefor.22

Legislative intent in eminent domain proceedings has been clearly spelled out in two very recent companion cases involving School Administrative District No. 17 in Norway. In the first of these cases, a complaint was brought to seek a declaratory judgement interpreting certain sections of the Sinclair Act relative to eminent domain procedure. Specifically, the plaintiff, owner of the land chosen as the site for the new administrative district school, alleged that the land could not properly be taken by eminent domain since the two towns involved, Norway and Paris, had not voted approval of

21 Goodwin v. Nye, 60 Me. 402 (1872).
such taking; and that the school directors, not the "municipal officers" of the town, had laid out the parcel of land in question and thus violated the law. The pertinent part of the statute reads as follows:

... When a location for the erection or removal of a schoolhouse and requisite buildings has been legally designated by vote of the town at any town meeting called for that purpose or by the school directors of a school administrative district, and the owner thereof refuses to sell, or in the opinion of the municipal officers, asks an unreasonable price for it ... they may lay out a schoolhouse lot and playgrounds, not exceeding 25 acres for any one project, and appraise the damages as is provided for laying out town ways, and on payment or tender of such damages ... the administrative unit designating it may take such lot to be held and used for the purposes aforesaid.\(^{23}\) (Italics mine)

In School Administrative District No. 17 v. Robert S. Orre,\(^{24}\) the Court interpreted this section to mean that the functions ordinarily performed by either selectmen or school committees of towns are now to be performed by the school directors of a school administrative district. The words "municipal officers" as used in the statute include school directors. Thus, the Court held that it is the duty and responsibility of the school directors to lay out the proposed lot and appraise damages for the taking thereof if the plaintiff refused to sell.

In the companion case settled just six months later, the facts were these. The plaintiff, Oxford County Agricultural

\(^{23}\)Maine, Revised Statutes Annotated (1957), c. 364, sec. 5.

Society, and owner of the proposed lot, contended that the
defendant, School Administrative District No. 17, could not
legally take their land by eminent domain since the property
was being used by the Society for a "public use" to promote
agriculture, etc., and furthermore, that the location of the
lot had not been approved by the voters of the District.

In finding for the defendant the Court said the follow-
ing:

... The justice below correctly found that while
the activities of the Society benefit the public in some
degree, they fall short of constituting "public uses" in
the technical sense which would exempt its property from
eminent domain processes.
The promotion of agricultural products at a fair
which lasts but a few days in each year, although
highly desirable, can hardly be said to lift any appre-
ciable burden from the shoulders of the taxpayers....
We conclude, as did the justice below, that the property
of the Society is not immune from condemnation by
the District.25

In dismissing the second allegation, Justice Webber said,
"... By its express terms Sec. 3562 provides that the location
of schools begins with a vote at a town meeting in the case of
a town and with a vote of the directors in the case of a
district."26

Contracts

Approval of plans. Plans and specifications for

25 Oxford County Agricultural Society v. School Admin-
istrative District No. 17, 161 Me. 337 (1966).

26 Ibid.
construction of a schoolhouse must either be furnished by the State Department of Education or approved by the Commissioner of Education and the State Bureau of Health. In Morse v. Inhabitants of Montville a question arose as to whether a school committee could contract for the construction of a schoolhouse before the plans and specifications had been approved. The Court answered in the negative, saying:

Plans or specifications must either be furnished by the State or submitted to the State Superintendent of Public Schools and the State Board of Health for approval; if this is not the case, all parties who did business with them in furnishing material or labor for the erecting of the schoolhouse dealt with them at their peril. 27

Once plans are approved, contractors are obligated to follow them. In a very early decision in 1840 it was held that a contractor could not recover of the district the value of materials for a school since the contract was not followed. 28 Neither may a city, under its charter rights, erect a schoolhouse unless the plans have been approved by the school committee. In Lund v. City of Auburn cited earlier, the Court said in effect that the city council is in no sense a school committee and can perform none of that body's functions, except by legislative grant. 29

Architectural services. The authority to construct a

29 Lund v. City of Auburn, 110 Me. 241, 85 A. 893 (1913), p. 244.
school building carries with it by implication the authority to retain and compensate an architect. The architect ordinarily is retained through the execution of contract of employment between the school board and the architect, which sets forth his responsibilities as well as his compensation. In an Old Town case in 1931 a school committee had engaged an architect to design a school and submit estimates of its cost. The city subsequently voted not to build the school and the architect sought to recover his fee. The Court held in Bunker v. City of Old Town that, "there is no principle or authority of law, statutory or otherwise, on which an architectural firm could recover from a municipality for plans and estimates never used but returned." 30

Summary

Maine school committees or school directors are responsible for the management of the schools and the custody and care, including repairs and insurance on school buildings and all school property in their administrative units. The property itself, however, is owned by the state. Local districts hold the title to the property, once paid for, in trust for the state. The legislature may control or dispose of such property, with or without the consent of the district or its inhabitants.

School Committees or directors have the right to construct

school buildings with or without the aid of the Maine School Building Authority and to take land for a school site by eminent domain if necessary. The state authorities must approve the building plans, however.

The control and use of school buildings is left almost entirely to the local board. In the event of an emergency declared by the Governor the control and use of school buildings would be turned over to the appropriate civil defense agencies.

While it is common practice in Maine to permit community use of school buildings for a wide range of activities, a series of opinions from the Attorney General's office have consistently held that school buildings may not be used for sectarian purposes by religious groups.
CHAPTER VIII

PUPILS

Introduction

Questions of a legal nature affecting pupils have been very similar throughout the nation. Typical of these are problems of admission, exclusion, attendance, classification, residence, tuition, transportation, curriculum, pupil control, moral instruction, and liability for injury.

Many of these questions have not as yet been contested in the Maine courts. Consequently, for answers to these questions, school administrators of the state must rely on opinions from the Attorney General's office and court decisions rendered in other states for guidance in interpreting the Maine statutes.

Attendance

Maine, like each of the other states, has a compulsory attendance law. The essential elements of the statute read as follows:

Every child between the 7th and 17th anniversaries of his birth shall attend some public day school during the time such school is in session, and an absence therefrom of 1/2 day or more shall be deemed a violation of this requirement. . . . Such attendance shall not be required if the child obtains equivalent instruction, for a like period of time, in a private school in which the course of study and method of instruction have been
approved by the commissioner. ¹

The validity of this enactment has never been tested in the Maine courts. One may safely assume, however, that the law would be upheld as a valid exercise of the police power of the state. In an historic decision in our neighboring state of New Hampshire, it was held that, "Education is so essential to the general welfare . . . that the state may require children to attend a public, private, or parochial school."²

In other jurisdictions, the courts are in disagreement as to whether home instruction by the parents or by a tutor is the equivalent of regular school education and meets the compulsory attendance requirements.³ This point has not been raised in Maine but the Attorney General ruled in 1964 that a correspondence course unapproved by the district directors and the Commissioner is not the equivalent of school attendance and does not satisfy the requirements of compulsory attendance.⁴

Exclusion

There are many provisions in the Maine statutes for the exclusion of pupils. These include contagion, filth and disease, physical or mental unfitness, habitual truancy and

¹Maine, Revised Statutes, Annotated (1964), c. 105, sec. 911.
disorderly conduct.

Maine's attendance law carries the following provision:

... The school committee or school directors may exclude from the public schools any child whose physical or mental condition makes it inexpedient for him to attend.  

The extent to which a child of school age must be handicapped in order to be excluded has never been defined by the statutes or by judicial opinion. Presumably this decision is left with local school authorities. The authority to exclude handicapped pupils from the public schools does not absolve the local school officials from the responsibility of providing education at public expense, however. A recent Attorney General opinion states in part:

Every administrative unit is responsible for appropriating sufficient funds to provide at least the same per capita expenditure for the education of handicapped or exceptional children as is provided for the education of normal children.  

Exclusion from school on the basis of disorderly conduct is spelled out in Chapter 15, section 473, paragraph 5 under duties of school committees as follows:

Expel any obstinately disobedient and disorderly scholar, after a proper investigation of his behavior, if found necessary for the peace and usefulness of the school; and restore him on satisfactory evidence of his repentance and amendment.

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5 Maine, Revised Statutes, Annotated (1964), c. 105, sec. 911.


7 Maine, Revised Statutes, Annotated (1964), c. 15, sec. 473, par. 5.
A distinction should be made between temporary exclusion commonly known as suspension and permanent exclusion generally known as expulsion. It is well established that teachers, principals, and superintendents have the legal right to remove temporarily a pupil from a classroom or from school if his conduct is disrupting the routine of the school. The suspension may be for an hour, a day, or for several days. In general, suspension seldom exceeds two weeks or ten school days since a longer suspension would give the pupil the status of a non-student. While there have been no Maine cases challenging the authority of school officials to suspend pupils, a Wisconsin case settled the issue in that state and the judicial thinking in the case has been widely upheld elsewhere. In State v. Burton, Justice Lyon said in part:

The teacher is responsible for the discipline of his school, and for the progress, conduct and deportment of his pupils. It is his imperative duty to maintain good order, and to require of his pupils a faithful performance of their duties. If he fails to do so, he is unfit for his position. To enable him to discharge these duties effectually, he must necessarily have the power to enforce prompt obedience to his lawful commands. For this reason, the law gives him the power, in proper cases, to inflict corporal punishment upon refractory pupils. But there are cases of mis-conduct for which such punishment is an inadequate remedy. If the offender is incorrigible, suspension or expulsion is the only adequate remedy . . . the conduct of the recusant pupil may be such that his presence in the school for a day or an hour may be disastrous to the discipline of the school, and even to the morals of other pupils. In such a case, it seems absolutely essential to the welfare of the school that the teacher should have the power to suspend the offender at once from the privileges of the school.8

As earlier noted, the legal right to exclude permanently or expel a pupil rests with the school committee or school directors. This responsibility may not be delegated to others. The legislative intent of the meaning of a "proper investigation" was explained in Shaw v. Small. While this case basically concerned itself with the legality of expelling a pupil from a school in a school district where his parents were nonresidents, a second allegation of the school authorities was that of disorderly conduct. The defendant pupil claimed that a proper investigation of his behavior was not made. In commenting on this point Justice Deasy said:

... The committee have large powers. They may exclude pupils for sanitary reasons, or because mentally defective ... they exercise quasi-judicial powers. If they act in good faith they are not liable in damages even if clearly wrong. After proper investigation they may expel a pupil. No appeal is provided for. If they act in good faith after proper investigation their decision is final. But before expelling a pupil they must make such investigation. This duty cannot be wholly delegated to others.

In the instant case the respondents received from certain teachers a written complaint about the conduct of the pupil. Upon this the respondents evidently relied in excluding the pupil and refusing reinstatement. A complaint by teachers is a sufficient reason for an investigation, but it is not an investigation, or at all events not such a proper investigation as the statute contemplates. (Italics mine)

A 1946 opinion by Attorney General Farris defines both investigation and repentance. His opinion reads in part as follows:

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9Shaw v. Small, 124 Me. 36, 125 A. 496 (1924).

10Ibid.
If the school committee received written statements from those who were present upon the action of this boy which caused his expulsion, in my opinion, that would be a proper investigation of his behavior, under the statute, and the fact that the boy signed a statement that he was sorry for the trouble he had caused and the school board restored him and he graduated from high school indicated that the case is now closed, as the boy's letter of repentance and amendment, in my opinion, is equivalent to a plea of confession and avoidance in a civil case.\textsuperscript{11}

Two additional Attorney General opinions support the principle that the school committee or directors make the final judgement in expulsion cases. In 1941, Attorney General Cowan said, "The committee may enforce obedience to all regulations within the scope of their authority. If they may select a book they may require the use of the book selected. . . . It is for the committee to determine what misconduct requires expulsion."\textsuperscript{12}

Earlier, in 1929, Attorney General Fogg said:

If, after a proper investigation, the committee is satisfied that it is necessary for the peace and usefulness of the school that the student be expelled, they have the power to expel him, and if they act in good faith they are not liable in damages, even though the court should subsequently find that they were clearly wrong.\textsuperscript{13}

It has been held in other jurisdictions that a child may be suspended or expelled for disrespect toward school authorities; for immorality; for drinking; for smoking; the use of cosmetics contrary to school regulations; irregular or tardy attendance at school; refusal to obey when told to

\begin{itemize}
\item \textsuperscript{11}\textit{Attorney General Report} (1946), p. 89.
\item \textsuperscript{12}\textit{Attorney General Report} (1941), p. 51.
\item \textsuperscript{13}\textit{Attorney General Report} (1929), p. 40.
\end{itemize}
read from a school book; refusal to submit to the examination of the school physician on the grounds of conscientious objections; refusal to give the name of a pupil who has been guilty of a breach of rules when he knows the name of the pupil; making a speech in a school meeting criticizing the board of education; being drunk on Christmas Day; publishing in a newspaper a satirical poem reflecting on school policy; failure to maintain a required scholastic standing, although there is substantial authority to the contrary; failure to pay for school property willfully or maliciously destroyed; and for general failure to obey the school rules or orders reasonably issued by any teacher or administrator. 14

In view of the aforesaid, there is no question as to the right of a school committee to expel a pupil under specific conditions. In our changing social scene, especially in the area of civil rights, it behooves school officials to act with renewed caution in this area. School committees should be careful to follow the prescribed procedures which include a proper investigation. In the future, this may well include a hearing by the pupil or his parents in which they may be represented by counsel. 15

Concerning the proper procedure to follow in the event that law enforcement officers attempt to interrogate a pupil

14 Hamilton, op. cit., p. 514.
while at school, a 1961 Attorney General's opinion offers the following guideline:

If a law enforcement officer requests an opportunity to question a student who is a minor and accused of a crime, the safest course would be to inform the parent immediately and ask the officer to defer until the parent's arrival.\(^\text{16}\)

The right of pupils to attend school is not subject to the whims and caprices of the school authorities, however. It has been stated frequently that only reasonable rules may be enforced. If pupils are suspended or expelled for the violation of an unreasonable rule, or where school authorities act maliciously, in bad faith, or arbitrarily, an injury is committed in which the pupil may seek remedy for wrongful expulsion. An action in mandamus to reinstate the pupil may be brought or a suit in damages. In the latter case, if a parent has incurred tuition expenses for his child's attendance at another school directly resulting from wrongful expulsion or suspension, an action to recover may be brought in his own name.

The courts will rarely substitute their judgement for that of a school committee in such cases. As one authority on the subject has said:

... Indeed it would be difficult to procure able teacher and board personnel if they were constantly faced with the possibility of having to answer in damages for mistakes which they might make in good faith. The public has no right to expect of its school personnel more than good faith efforts to carry on the educational work of the district.\(^\text{17}\)


\(^{17}\)Ibid., p. 520.
Residence of Pupils

Establishing the legal residence of pupils for school purposes is a problem in Maine as elsewhere. Courts around the country are in general agreement that the domicile of the child for school purposes is the domicile of the parents.18 In Maine, legal residence is defined as the administrative unit where the father maintains a home for his family.19

The ownership of a house and the maintaining of a home are not synonymous. Thus in 1963 the Attorney General stated that the ownership of a summer home in a town where the family resides each summer and on which the parents pay taxes is not sufficient for town tuition privileges.20 It has been held in Maine that the school residence of pupils whose parents reside on a U.S. government reservation or military reservation is the same as the town or school district in which the installation is located.21

Only one case involving legal residence has reached the Maine Supreme Judicial Court. This was Shaw v. Small22 referred to earlier in this chapter. The litigation centered

22 Shaw v. Small, 124 Me. 36, 125 A. 496 (1924).
around the meaning of the word "guardian" as used in Chapter 16, Section 30 of the Revised Statutes. This section provides that every child shall have the right to attend the public schools in the town in which his parents or guardian has a legal residence. Joseph A. Arsenault, the boy involved in the case, was thirteen years of age and a ward of the state. By due court proceedings he had been placed in custody of the State Board of Children's Guardians and this Board placed the boy in the care of a Mrs. Whalen, a resident of Yarmouth, with whom in that town the boy lived despite the fact that the boy's parents were not separated and lived in another town.

The facts of the case indicate that the boy was a disciplinary problem and, failing to expel legally the boy on disorderly conduct charges, the school officials attempted to expel him on the basis that his parents did not reside in the school district where he was attending school. The Court ordered the reinstatement of the boy to the public schools of Yarmouth.

Excerpts from the opinion follow:

. . . The word guardian when used in statutes ordinarily signifies the guardian appointed by the Probate Court, but the word does not necessarily mean Probate Guardian. It may be used in its broader sense as "a person who legally has the care of the person or property or both of another, incompetent to act for himself." The care and the custody of the boy was given to Mrs. Whalen by the State. She has the right to his custody as against the boy's parents and against all comers except the State itself. She stands toward the boy in loco parentis. In the sense in which the word is used in R.S.; Chap. 16, Sec. 30, she is the guardian of the child.\(^\text{23}\)

\(^{23}\text{Ibid.}\)
The legislature has since revised the original statute and clarified the meaning of residence. It reads as follows:

... Every person between the ages of 5 and 21 shall have the right to attend as a full-time student, or with the consent of the school committee or board of directors, as a part-time student, the public schools in the administrative unit in which his parent or guardian has residence. Residence as used in this section shall mean the administrative unit where the father maintains a home for his family. If the parents are separated, residency shall be considered to be the administrative unit where the person having custody of the child maintains his or her home.24

Attendance at a school in a district where a pupil's parents or guardian do not reside is not permissible unless tuition charges are made. In 1950, the Attorney General's office ruled that:

If a child residing with a grandmother who stands in loco parentis attends high school in another town by reason of there being no high school in the town of the child's residence, the town of the child's residence is liable for tuition notwithstanding that the grandmother has not been appointed the guardian of the child.25

The Attorney General's office offered another opinion in 1961 as follows:

It is clear that when a town maintains an elementary school, the only basis for allowing a pupil to attend a school in another town and payment of tuition by the sending town is upon a finding of the school committee that the pupil lives remote from the public school in his own town, except that with approval of the school committee a parent may send his child to another town, but the parent must pay the tuition and not the sending town.26

24Maine, Revised Statutes (1951), c. 103, sec. 859.
Tuition

Generally, children may attend school in districts in which they are nonresident if the home district does not maintain free public schools, and the town pays a tuition charge to the receiving district. Maine, being a large and sparsely populated state has many unorganized townships, islands, and remote areas where free public schools cannot be maintained. It is also interesting that there are twenty-eight private academies in the state which depend entirely on tuition students for operation. This means that Maine has an unusually large number of tuition pupils attending schools in districts in which they do not reside.

Another interesting fact about tuition pupils in Maine is that at least one town contracts for the secondary schooling of its pupils with a parochial school. While it has not been challenged in the courts, it is interesting to speculate as to whether or not this would be held to be a church-state conflict in which public tax moneys are being spent to support a sectarian school.

Three cases, all involving the payment of tuition, have reached Maine's highest court. Not surprisingly, all involved private schools. In the earlier statutes on tuition, a pupil could not be accepted at a school as a tuition pupil without a certificate of qualification from the school committee of the sending town stating that the pupil was qualified to
attend. In *Goodwin v. Charleston*, a boy who lived in Charleston, which did not maintain a high school, applied and was accepted at Higgins Classical Institute as a tuition pupil. He did not request nor did the private school seek a certificate of qualification from the local school committee. After attending the school for a year, the Institute requested the tuition payment from the town of Charleston. The town refused to pay whereupon the boy's father paid the amount due. This action was brought by the father to recover from the town the amount of the tuition. The action was denied. Justice Whitehouse said in part:

... The only question now presented for determination is whether this action brought in the name of the pupil himself by his next friend, can be maintained to recover from the town the amount of the tuition voluntarily paid to the Institute by his father, and our conclusion is that the situation disclosed by the evidence constitutes no legal basis for the plaintiff's action.  

Apparently the case was settled on the single point that the boy had failed to get a certificate of qualification from the local school committee.

In a very similar case settled just a year later the Court was asked to determine who has the right to recover tuition from a sending town, the parent or guardian of the pupil, or the school which the pupil attends. Ricker Classical Institute in Houlton brought action to recover tuition for

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27 *Goodwin v. Inhabitants of Charleston*, 100 Me. 549, 62 A. 606 (1905).  
three pupils attending from the town of Mapleton. For reasons not readily apparent in the facts of the case, the town of Mapleton had refused to pay the tuition charges due. The defendant town maintained that the parents were responsible for the payment of tuition and they in turn could collect from the town. The Court upheld Ricker Classical Institute, the plaintiff in the case. Justice Whitehouse said in part:

... It is the opinion of the court that this contention cannot be sustained. It would seem to be the more reasonable and natural construction of the statute to hold that the legislature intended to establish the relation of debtor and creditor between the town and the school, and to require the town to pay the tuition directly to the school that rendered the service.29

Under the revised statutes now in effect, school administrative units not maintaining approved secondary schools are authorized to contract with neighboring districts for the secondary schooling of the qualified youth of its district. Under Section 1291, however, any youth whose parent or guardian maintains a home for his family in any administrative unit which fails to maintain an approved secondary school or fails to contract for such schooling on a tuition basis may attend any approved secondary school in the state to which he may gain entrance. The town is responsible for the tuition of the pupil.30

29 Ricker Classical Institute v. Inhabitants of Mapleton, 101 Me. 553, 64 A. 948 (1906).

30 Maine, Revised Statutes, Annotated (1964), Title 20, c. 113, sec. 1289.
The only other tuition case on record considered the right of pupils to attend a secondary school other than those which had been contracted for by the sending town. In Maine Central Institute v. Inhabitants of Palmyra, the facts of the case were as follows. The town of Palmyra which had no high school contracted for the schooling of its secondary students with the adjoining town of Newport and with the trustees of Hartland Academy in the adjoining town of Hartland. Four students from Palmyra, nevertheless, elected to attend Maine Central Institute in the adjoining town of Pittsfield. In an action by Maine Central Institute to recover tuition from the town of Palmyra the plaintiff based its right to recover on Section 93 which reads in part as follows: "Any youth who resides with a parent or guardian in any town which does not support and maintain a standard secondary school may attend any approved secondary school to which he may gain entrance." The defendant town of Palmyra contended that under the statute, a child residing with his parents in a town without a high school had no right to attend an outside school at the expense of the town for tuition unless the town failed to contract as provided.

The Court ruled in favor of the inhabitants of the town of Palmyra. Since the town had furnished adequate

31 Maine Central Institute v. Inhabitants of Palmyra, 139 Me. 304 (1943).

32 Ibid.
secondary school educational opportunities to its youth under contracts, it was not liable for tuition bills for the youth of Palmyra who wished to attend other secondary schools. Justice Hudson in speaking for the Court said in part:

... Is there a repugnancy so great that the legislative intent to amend or repeal is evident? Did the legislature intend to give a town this right and at the same time intend to leave with the child the right to attend any outside approved school in the state to which he might gain entrance and make the town pay for tuition? We think not. Such intentions would clearly spell absolute repugnancy. 33

Under Section 1291 of the current statute in effect, a pupil may attend any secondary school to which he may gain entrance if the local high school offers less than two approved occupational courses of study; fails to offer a two-year course in mathematics, science or a foreign language; or fails to offer an approved technical or vocational course which the pupil wishes to pursue.

A series of opinions from the Attorney General's office have consistently upheld this section. They are as follows:

"(a) School Administrative District #47 was held responsible for the tuition of a Sidney Student who attended an Institute for the purpose of studying Latin III despite the fact that the District claimed it would have offered the subject locally had the student requested it." 34

"(b) The town of Bristol was held responsible for the tuition of Bristol pupils attending Lincoln Academy for the purpose of studying foreign

33 Ibid.
languages not available locally despite the fact that a foreign language teacher was employed after the school year started. 35

"(c) The town of Webster was held responsible for the tuition of a pupil attending Lewiston High School for the purpose of studying French III, a course not offered locally. 36

"(d) A Bristol pupil was granted tuition privileges at Lincoln Academy for the purpose of studying Latin II despite the fact that he was in his fifth year of secondary school study. 37

Finally, three opinions from the Attorney General's office on miscellaneous matters pertaining to tuition are here included:

"(a) A receiving school may not charge a full semester's tuition for pupils who enroll late or leave the school before the end of the term, as tuition may only be charged for pupils while they are receiving instruction in the schools. 38

"(b) Free tuition privileges in the public school system do not extend to postgraduate courses. 39

"(c) Based on present law it would not be proper to charge tuition to students attending a public school during the summer. 40

Pupil Control

School committees and boards of directors charged with

36 Ibid., p. 59.
37 Ibid., p. 60.
the management and operation of the public schools have the legal right to adopt reasonable rules for the discipline and management of the schools. The rules of a board of education are final in such respect, and the courts will not interfere unless the board acts unreasonably or in violation of law. The courts are very reluctant to declare a board regulation unreasonable. They will rarely substitute their own discretion for that of the school authorities.

As has been stated repeatedly in this study, the teacher stands in loco parentis to children under his supervision and may exercise such powers of control and discipline as are reasonably necessary for him to perform properly his duties as a teacher and to accomplish the purposes of the school. Generally, so much of the authority of a parent is impliedly delegated by law to a teacher as is necessary for the proper control, supervision, and discipline of a child.

Those areas which have resulted in most of the litigation in connection with pupil control include exclusion, which has been discussed earlier in this chapter; corporal punishment; regulations concerning pupil dress and appearance; married pupils; required subjects including religious and moral instruction; and regulations governing pupil behavior off school grounds and after school hours. These subjects will now be considered separately.

Corporal punishment. The courts have held repeatedly that a teacher may inflict reasonable corporal punishment on a pupil for insubordination, disobedience, or other
misbehavior. While school officials, including superintendents, principals, and teachers, are vested with broad discretionary authority in the infliction of corporal punishment, the punishment must be reasonable and within the bounds of moderation; it cannot be cruel or excessive, and the official administering the punishment must not act maliciously, wantonly or in a fit of anger. In the determination of whether the punishment is reasonable, the courts have held that consideration must also be given to the age, sex, and size of the pupil.

Regarding the criminal or civil liability of a teacher who inflicts corporal punishment, certain general rules are important. In a civil action against a teacher for damages caused by improper punishment of a pupil, the burden of proof rests on the plaintiff to satisfy the jury that the teacher unlawfully beat and injured the child and that damages resulted therefrom. Whether the punishment was unreasonable or excessive and whether there was an injury are questions of fact for a jury to determine in a civil lawsuit.

On the question of a criminal liability it has been held that moderate and reasonable correction by a teacher with a proper instrument is not a criminal offense. Mere immoderate and excessive force does not constitute a crime unless it is of such a nature as to produce or threaten lasting

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or permanent injury and is accompanied by express or implied malice.\footnote{42}

Two very early cases reached the Maine Supreme Judicial Court on the subject of corporal punishment and the precedents established still hold today. In Stevens v. Fassett,\footnote{43} in 1847, a pupil by the name of Calvin Fassett charged the master of a school, and the school agent, with assault as a result of having been forcibly removed from the schoolhouse. The boy had refused to remove himself from the instructor's desk, and the master being unable to remove physically the twenty-one-year-old pupil by himself, sought the aid of the school agent who assisted the master in ejecting the boy from the school. The Court held in favor of the teacher and the school agent. Pertinent excerpts from the decision follow:

... When a scholar in school hours, intrudes himself into the desk assigned to the instructor, and refuses to leave it, on the request of the master, such scholar may be lawfully removed by the master; and for that purpose he may immediately use such force, and call to his assistance such aid from any other person, as is necessary to accomplish the object, without the direction or knowledge of the superintending school committee.

The right of the parent to keep the child in order and obedience, is secured by the common law. He may lawfully correct his child, being under age, in a reasonable manner, for this is for the benefit of his education. He may delegate also a part of his parental authority during his life, to the tutor or schoolmaster of his child, who is then in loco parentis, and has such portion of the power of the parent, committed to his charge, viz: that of restraint and correction, as may be necessary to answer the purpose for which he is employed.

\footnote{43}Stevens v. Fassett, 27 Me. (14 Shep.) 266 (1847).
The power of the parent to restrain and coerce obedience in children, cannot be doubted, and it has seldom or never been denied. The power delegated to the master, by the parent, must be accomplished for the time being, with the same right as incidental, or the object sought must fail of accomplishment. . . . The practice, which has generally prevailed in our town schools, since the first settlement of the country, has been in accordance with the law thus expressed, and resort has been had to personal chastisement, where milder means of restraint have been unavailing.44

The legality of corporal punishment was perhaps more strongly worded in the second and only other case to reach the Maine courts on the subject in 1886. This was an action charging the schoolmaster with assault and battery forSwitching a pupil for refusing to bring in wood for the school stove. In deciding in favor of the schoolmaster, Justice Emery clearly spelled out the legality of corporal punishment along with certain other general propositions of importance to school officials, teachers and pupils. He said in part:

. . . A schoolmaster has a right to inflict reasonable corporal punishment. He must exercise reasonable judgment and discretion in determining the manner of punishment, and to what extent. In determining what is reasonable punishment, various considerations must be regarded. The nature of the offense; the apparent motive and disposition of the offender; the influence of his example and conduct upon others and the age, sex, size and strength of the pupil to be punished. . . .

Among reasonable persons much difference prevails as to the circumstances which will justify the infliction of punishment and the extent to which it may be properly administered. On account of this difference of opinion and the difficulty which exists in determining what is a reasonable punishment and the advantage which the master

44Ibid.
has by being on the spot and knowing all the circumstances, the manner, look, tone, gestures and language of the offender, which are not always easily described and thus to form a correct opinion as to the necessity and the extent of the punishment, considerable allowance should be made to the teacher by way of protecting him in the exercise of his discretion. Especially should he have this indulgence, when he appears to have acted from good motives and not from anger or malice.45

Pupil dress and appearance. A second area of pupil control which has precipitated a number of controversies between school officials and parents is that of rules and regulations pertaining to pupil dress and appearance. Especially in this age of long hair and short skirts, the subject has received a good deal of publicity and much concern among school officials. It should be pointed out, however, that current fads are by no means responsible for the bulk of the litigation which has arisen on the subject.

As early as 1923 in a landmark case which was referred to for years, the Supreme Court of Arkansas set the judicial tone for later decisions on this subject. The decision of the Court in this case would unquestionably be overruled in this day and age but is here included as an example of how far the courts will go in backing up rules and regulations of local boards of education. As stated earlier, the courts will rarely substitute their judgement for that of school boards when they have acted in good faith.

In Pugsley v. Sellmeyer,46 the Court upheld the right

of a school board to deny admission of a girl using cosmetics contrary to a board rule that stated that the wearing of transparent hosiery, low-necked dresses or any style of clothing tending toward immodesty in dress, or the use of face paint or cosmetics, is prohibited! While the board rule may seem a little unreasonable in 1968, the reasoning behind the Court's decision is not. Excerpts from this opinion follow:

The question . . . is not whether we approve this rule as one we would have made as directors of the district, nor are we required to find whether it was essential to the maintenance of discipline. On the contrary, we must uphold the rule unless we find that the directors have clearly abused their discretion, and that the rule is not one reasonably calculated to effect the purpose intended, that is, of promoting discipline in the school; and we do not so find.

Courts have other and more important functions to perform than that of hearing the complaints of disaffected pupils of the public schools against rules and regulations promulgated by the school boards for the government of the schools. The courts have this right of review, for the reasonableness of such rule is a judicial question, and the courts will not refuse to perform their functions in determining the reasonableness of such rules, when the question is presented. But in doing so, it will be kept in mind that the directors are elected by the patrons of the schools over which they preside, and the election occurs annually. These directors are in close and intimate touch with the affairs of their respective districts, and know the conditions with which they have to deal.\(^47\) (Italics mine)

It is interesting to note that as recently as 1951, a Maine Attorney General referred to this same case in ruling that school authorities may prescribe the kind of dress to be worn by pupils or make reasonable regulations as to their personal

\(^47\) Ibid.
appearance.48

The question of rules and regulations concerning pupil
dress and appearance has not as yet reached the Maine Supreme
Judicial Court. The Attorney General opinion cited above is
currently the only guideline that Maine school officials have.
A very recent case on this subject in our neighboring State of
Massachusetts, however, reflects a judicial attitude which
would probably carry considerable weight in Maine should a
similar case arise.

In Leonard v. School Committee of Attleboro,49 a
seventeen-year-old high school senior was suspended for wearing
an extreme "beatle-type" haircut, until such time as he got
an "acceptable" haircut. The boy and his parents brought an
action to require the school committee to lift the suspension.
Their contention was that the hair style was necessary to the
boy's profession since he performed as a musician and that
the board's regulation was an invasion of personal privacy
as well as that of the domain of the home and family.

Not so, held the Court. They ruled that the unusual
hair style of the boy could disrupt the maintenance of proper
classroom atmosphere and decorum. It held that any unusual,
immodest or exaggerated mode of dress, or conspicuous departures
from accepted customs in the matter of haircuts were legal
grounds for suspension.


704, 212 N.E. (2d) 468 (1965).
Married pupils. It has been held in Louisiana, New York, and Ohio that school boards cannot compel married pupils to attend school even though such pupils are within the compulsory attendance age. On the other hand, pupils wishing to attend school may not be excluded because they are married. Attorney General Frost, in addressing himself to the question of the legality of excluding married pupils under twenty-one years of age said:

Such action is not permitted ... and would, in fact, be repugnant to public policy, in that the courts have always frowned upon any action which might be construed as restraining marriage after the party has reached marriageable age, where no immorality or misconduct is present.

While there are no Maine cases so holding, four recent decisions in Texas, Michigan, Ohio, and Utah have all upheld the right of school authorities to exclude married pupils from participation in extracurricular activities, including athletics. The weight of legal authority is clearly on the side of the pupil on the question of marriage. Married pupils.

51 In re Rogers, 234 NYS (2d) 172 (1962).
pupils may not be excluded solely on the grounds of marriage nor may they be forced to attend school to satisfy compulsory attendance requirements.

In 1929, Attorney General Fogg ruled that a school committee has the power to expel a student who is the admitted father of an illegitimate child, if, after a proper investigation, the committee is satisfied that it is necessary for the peace and usefulness of the school, and if they act in good faith. This question has not since been raised with the Attorney General for an opinion nor has it reached the courts.

Curriculum

**Required subjects.** The state has the legal right to require that designated studies essential to good citizenship be taught and that nothing be taught which is contrary to the public welfare. Local boards, in the absence of statutory regulations, have the discretion to provide for the teaching of such studies as they deem advisable.

While the school committee, subject to state law, has the right to establish generally the curriculum, the law contemplates that general methods of instruction are within the control of professionally trained teachers, principals and superintendents. While school authorities have the right to define the school curriculum, parents may make reasonable selections from the prescribed studies for their children. A

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parent cannot insist that his child be taught subjects not in the program of studies or that he use a textbook different from that adopted by the school authorities.

The Maine laws provide that the school committees and school directors, "Direct the general course of instruction and approve a uniform system of textbooks and make provisions for the instruction of all pupils in schools supported by public money."

The legislature, under the authority of Article VIII of the Constitution has, from time to time, directed the local boards of education to provide for specific instruction in such areas as physiology and hygiene; effects of alcoholic drinks, stimulants and narcotics; American history; geography and natural resources of Maine; virtue and morality; and a host of other topics which need not here be enumerated.

The only real controversy in Maine concerning required subjects has been in connection with moral and religious instruction.

Maine, as most other states, had a statute which required readings from the scriptures and recitation of the Lord's prayer. The Supreme Court of the United States, in 1963, in the historic Schempp and Murray cases, rendered these practices unconstitutional under the First Amendment as it applied to the states under the Fourteenth Amendment.

59 Maine, Revised Statutes, Annotated (1964), Title 20, c. 15, sec. 473.

These cases received wide publicity throughout the country. The arguments and reasoning of the Justices have been widely reviewed and need not be reported here. The interpretation and implementation of the Court's decision has differed somewhat throughout the country. Of interest at this point is the interpretation of the Maine Attorney General and the State Board of Education.

Following the June 17, 1963, Supreme Court decisions, Attorney General Hancock forwarded a synopsis of the decisions and an interpretation of its effect under Maine law to the Commissioner of Education, dated June 21, 1963. Quotes from this letter follow:

... There is no question that the exercises set forth in section 145 of chapter 41, and the statute itself, are unconstitutional and must be considered henceforth null and void. All practices in our public schools of Bible reading and recitation of the Lord's Prayer or any other prayer as part of a religious exercise shall cease. The pamphlet printed and distributed by the Department of Education entitled "Suggested Bible Readings for Maine Public Schools" should be now discarded by school officials.

It is clear that the decision does not prohibit the secular study of the Bible or of those subjects in which the history of religion may be an integral part.

It also would not prohibit the study and recitation in our schools of documents and books containing references to God nor would it prohibit the singing of religious hymns by students as long as that singing was not a part of a regular religious exercise or program.

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63 Letter from Hon. Frank Hancock, Attorney General, State of Maine, Augusta, Maine, to Dr. Warren G. Hill, Commissioner of Education.
Following several letters of protest not only of the Supreme Court decision, but of Attorney General Hancock's interpretation, a second letter was addressed to the Governor on November 7, 1963. In this second opinion the Attorney General went into considerably more detail in answering specific questions. Excerpts from this second letter are as follows:

The only way to nullify or override the Supreme Court decision is by an amendment to the Constitution of the United States. . . .

Teachers may not voluntarily conduct the reading of the Bible or recitation of prayers in the public schools. . . .

The teacher has no inherent authority to conduct religious exercises and she may not effectuate a policy which is beyond the power of her employer to authorize, nor may she attempt to accomplish by indirection that which is directly forbidden by the law of the land. . . .

Most of the letters I have received bemoan the fact that children no longer may be subject to the practice of Bible reading and prayer recitation. There is some expression of fear that, because of the discontinuance of the practice, our children will be deprived of a vital religious indoctrination formally provided by the public schools. This is the very nub of the decision, to keep government separate from religion. If we as a society have gone so far that we must depend upon our schools to provide the only touch of devotional exercise for our children, then we should admit to failure in parental and community guidance and leadership. . . .

Finally, I am alarmed by those who urge defiance of the ruling of the Court.

Disagreement with the Court, or dislike of its rulings, is no excuse for defiance. Private citizens, as well as public officials, are bound by the law as pronounced by the highest court in the land. . . . We cannot properly educate our children, and we cannot demand of them respect and discipline, if we ourselves do not show respect for the law. To be responsible citizens we must practice what we preach and set the example by obeying the law.\(^{64}\)

\(^{64}\) Letter from Hon. Frank Hancock, Attorney General, State of Maine, Augusta, Maine, to Hon. John Reed, Governor of Maine.
Another question which has resulted in considerable confusion is the extent to which the Bible, as a purely literary document, may be studied in the schools. The Supreme Court pointed out that the decision does not prohibit the secular study of the Bible or of those subjects in which the history of religion may be an integral part.\textsuperscript{65}

The State Board of Education issued a comprehensive policy statement on "Use of the Bible in Maine Public Schools" on May 22, 1964. In the concluding paragraph it states:

In summary, the decision of the Supreme Court in the Schempp and Murray cases does not alter the schools' responsibility for proper use of the Bible in the public schools. It is a proper part of secular education. School officials are free to continue use of the Bible as a source book and to utilize it as an integral part of appropriate courses.\textsuperscript{66}

This policy statement appears in its entirety in the Appendix.

In 1960 a question was directed to the Attorney General's office concerning the propriety of excusing certain students from required instruction in the field of physiology and hygiene on the grounds of conscientious objection. The opinion was stated as follows:

A statutory duty of the school committee is to "... make provisions for the instruction of all pupils in schools supported by public money or under state control in physiology and hygiene, with special reference to the effects of alcoholic drinks, stimulants and narcotics upon the human system." It is my opinion that the Legislature has acted in this area and the agencies charged with administration of the law are


without authority to exempt any student from those courses required by statute.67

**Required textbooks.** The authority of the legislature to prescribe specific subjects to be taught in the public schools implies authority to designate the textbooks to be used. This authority has been challenged only once in the Maine courts. The primary issue in the case was the legality of requiring the Protestant version of the Bible to be used in the daily opening exercises. In *Donahoe v. Richards*,68 a Roman Catholic pupil was expelled for refusing to read from the Protestant version of the Bible. The Court upheld the decision of the school committee in this historic case.

In view of the recent United States Supreme Court decisions just cited, the Maine decision of upholding the school committee's right to prescribe which version of the Bible shall be used is largely academic. Certain excerpts from this decision, relative to textbooks and prescribed studies are still valid, however, and are here included:

... With such committee, the Legislature has reposed the power of directing the general course of instruction and what books shall be used in the schools; and they may rightfully endorse obedience to all the regulations by them made within the sphere of their authority. ... For a refusal to read from a book thus prescribed, the committee may, if they see fit, expel such disobedient scholar. ... No scholar can escape or evade such requirement when made by the committee, under the plea that his conscience will not allow the reading of such book.69

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Transportation

The matter of pupil transportation is largely regulated in each state by statutes. The constitutionality of laws providing for the transportation of public school pupils has consistently been upheld by the courts. The ages of pupils and the distance they reside from schools, in order to be eligible for transportation, varies from state to state and from school district to school district. The Maine statutes leave these decisions almost entirely to the discretion of the local boards.

Chapter 505, section 3561 of the Revised Statutes provides that "Conveyance of all elementary schools, a part or the whole of the distance, to and from the nearest suitable school, shall be procured when such pupils reside at such a distance from the said school that, in the judgement of the school committee, such conveyance is necessary." 70 Section 358 of Chapter 11 pertaining to Community School Districts, on the other hand, states that, "Transportation shall be provided by the community school committee in the same manner as is provided for transportation of elementary pupils in section 3561, the expenditures for transportation to be considered an expense of operation of said school or schools." 71 Finally, section 220 of Chapter 9 provides that the transportation of all pupils residing in a school administrative district shall

70 Maine, Revised Statutes, Annotated (1964), c. 505, sec. 3561.
71 Ibid., c. 11, sec. 358.
be provided in accordance with provisions of section 358.72

Although the matter of distance from the nearest suitable school is clearly left to the discretion of the school committee, the question of age, or more specifically grade level, is not. Secondary pupils residing in a local independent district or in a school union district are not entitled to transportation under the statutes whereas secondary pupils residing either in a community school district or a school administrative district are.

While these statutes are not contradictory, nor have they been challenged in the courts as discriminatory, legislative scrutiny is indicated. It is apparent from the statutes that some secondary pupils in the state must be provided with transportation while others, depending upon the local administrative organization, do not enjoy the same privilege.

Questions frequently arise concerning the responsibility of pupil control on school buses. The general legal principle is that schools have "home to home" responsibility. That is to say that a pupil eligible to be picked up at a bus stop or at his home has the right to be returned to the same place after school. This is not to suggest that pupils cannot be denied the privilege of transportation because of disorderly conduct, however. The "home to home" responsibility carries with it the implied right of pupil control and the authority to enforce reasonable rules of behavior while on the bus.

There are no court cases of record on this point in Maine but the Attorney General's office has offered the opinion that a bus driver has the authority under the statutes to control the conduct of the pupils and can use reasonable force to do so if necessary, and furthermore, has the same authority as a teacher while the pupils are under his control.\(^7\)\(^3\)

The opportunity to ride on a school bus is a privilege and not a right. Pupils who refuse to obey reasonable rules and regulations while on a bus may be denied the right of transportation. The question of liability of a bus driver in the event of an accident has been discussed elsewhere in this study. The question of liability due to an injury to a pupil who has been removed from a school bus before reaching his regular bus stop and forced to walk home has not been settled in the courts. School officials and/or the bus driver might well be held responsible in such a circumstance.

The question of the legality of transporting private school pupils at public expense has caused considerable litigation and the courts in various jurisdictions are not in agreement on the subject. The United States Supreme Court has upheld the constitutionality of a New Jersey state law which provides for the transportation of parochial school pupils at public expense. In the famous Everson case,\(^7\)\(^4\) the Court held


that the state did not violate either the Fourteenth Amendment of the Constitution or the First Amendment in providing for the transportation of parochial pupils at public expense. Such expenditures for transportation, in the opinion of the Court, did not constitute the conduct, establishment, or support of religion.

Whether or not a parochial pupil may be transported at public expense in the respective states depends largely on the constitutional or statutory laws of each state.

This question was settled in Maine as a result of the Squires case. The city council of Augusta had appropriated funds for the transportation of those elementary school children residing in the city who attended parochial schools. The council claimed it had this authority under its charter from the legislature. Thirteen taxpayers of the city challenged this appropriation as being unconstitutional. In deciding against the council, the Maine Supreme Judicial Court ruled that:

In enacting the laws pertaining to education, the legislature intended that no municipality should regulate by ordinance or order any subjects which would affect or influence general education unless permitted to do so by an express delegation of power . . . the state educational policy cannot and must not be interfered with by any subordinate governing body.

In the absence of express authority from the legislature in the city charter or a statute, the Augusta city council has no authority under its police power to enact an ordinance providing for the transportation of pupils to or from private schools.76

75 Squires v. Inhabitants of City of Augusta, 155 Me. 151, 153 A. 2d 80 (1959).
76 Ibid.
The Supreme Court Justices added some dictum in their written opinion, however, which suggested to the legislature a method of solving this problem. This is one of the very few times that the Court has entered into the realm of speculation, at least in the field of education, so far as this writer has been able to determine. The Court said the following:

A properly worded enabling act, authorizing municipalities to expend funds for the transportation of children to private schools, not operated for profit, if one were to be enacted by the legislature, would meet constitutional requirements.77

Just two years after this decision was handed down, the legislature passed the enabling act suggested above. The constitutionality of this act remains unchallenged to date. The legislation is permissive, however, and there is a monetary penalty involved in that sums expended for the transportation of parochial students are not included in the computation for determining the foundation program subsidy. The legality of the financial penalty has been referred to the Attorney General on two separate occasions. In each instance the opinions have upheld the legality of the statute.78

Summary

The legislature, in carrying out its mandate under Article VIII of the Maine Constitution, has enacted a number

77Ibid.
of statutes pertaining to pupils. Some of these are mandatory on a statewide basis; others leave the authority to the discretion of the local school committee or school directors.

All pupils, excepting those with severe handicaps, between the ages of seven and seventeen must attend public schools or approved private schools in the school district where they live. Residence has been defined as the municipality where the father or legal guardian of the child maintains a home for the child.

Children of compulsory school attendance age may be excluded on the basis of physical or mental unfitness or disorderly conduct. In the case of conduct, the exclusion may be temporary or permanent but the child has the right of readmission upon his repentance.

Pupils residing in school districts not maintaining high schools or maintaining a high school without certain prescribed courses of study have the right to attend high schools in other districts on a tuition basis although they may not be compelled to attend. The local district is responsible for the tuition.

The legislature has delegated the authority for the care and management of schools to the local boards of education. This authority includes the right to make reasonable rules and regulations concerning pupil behavior. This authority is further delegated to school administrators and teachers. They may use corporal punishment in enforcing these
rules if deemed necessary.

The local control principle includes curriculum as well as behavior. Local committees may prescribe which subjects shall be taught as well as the textbooks to be used. The secular study of the Bible may be included if the local school district deems it advisable.

Transportation of public school pupils at the elementary level is mandatory in all districts although the distance that pupils may be required to walk is left entirely to the discretion of the local committees. Transportation of public school secondary pupils is mandatory in community school districts and school administrative districts although the same option of establishing a reasonable "walking" distance is left with the school officials. The transportation of secondary pupils in supervisory unions and in independent districts is optional with the local authorities. Transportation of private school pupils is optional with the local district. No state reimbursement for such costs is provided for under the law.
CHAPTER IX

TEACHERS

Introduction

The profession of teaching has undergone dramatic changes, especially over the last twenty-five years. In the early beginnings of public school education in Maine, teachers or "schoolmasters" as they were commonly called, enjoyed few of the present-day privileges and little or no protection under the law. They were examined and awarded a certificate to teach by local officials. They were at the mercy and whim of local school boards. Indeed it was held in an early case that, "... If all the members of a board should neglect or even wantonly refuse to examine a person he would not be authorized to teach and to recover his wages without the required certificate."\(^1\)

Contracts in the early days were informal and subject to termination by the school board at their pleasure. The teacher was without tenure rights and without the protection of minimum salary laws. Other benefits, including a retirement system, equal pay for men and women teachers, sick leave and leaves of absence were not provided.

\(^1\) *Jackson v. Inhabitants of Hampden*, 20 Me. pt. 1 (2 App.) 37 (1841).
This chapter will consider the topics of certification, employment, tenure, dismissal, compensation, and retirement of teachers. A section on collective bargaining is also included since this is the latest issue of concern to educators in Maine, as elsewhere.

Before proceeding with specific topics, a clarification of the legal definition of a teacher might be in order. In general, any discussion of the rights and privileges of a teacher also includes those of persons in charge of a school or schools known as head teachers, teaching principals or supervising principals. Also, in Maine the statutes do not differentiate between classroom teachers and those persons who are assigned to full-time supervisory positions. Basically, a principal is considered to be a teacher-in-charge and is entitled to the same privileges under the law as a full-time classroom teacher.

There is only one reference to the word "principal" to be found in the Maine statutes on education. This is in Chapter 7, section 151, paragraph 5 of the Revised Statutes. It reads as follows:

When a School Administrative District employs less than 15 teachers and owing to geographical location or other reasons it is not practicable to combine with other administrative units to form a supervisory unit as authorized in this section, the directors, on approval of the commissioner and board, may employ a qualified person to serve as superintendent of schools and as supervising principal.² (Italics mine)

²Maine, Revised Statutes, Annotated (1964), Title 20, c. 7, sec. 151, par. 5.
It would appear that the intent of the legislature here is to combine the positions of superintendent and principal in small, isolated districts in which case the legal duties of the position would pertain more to those of superintendent than teacher.

The position of superintendent of schools is well defined in the statutes in terms of qualifications, duties and responsibilities. The only direct benefit obtaining to superintendents similar to that of teachers is that of retirement privileges. It was held in a 1954 opinion by the Attorney General that:

Under this section of the law, for the purposes of retirement only, "employees" of the State of Maine participate in the Maine State Retirement system; "employees" include teachers, and teachers are defined to include the superintendent employed in any day school within the State.  

Another Attorney General opinion in 1961 held that a principal, who had served twenty years as a teacher, could not be put on a probationary contract as a principal since a principal is included within the definition of a teacher.  

Certification

Issuance of certificates. In the early history of Maine public education the authority to issue a teaching certificate or "license" to teachers was vested in the local school committee. Later, in 1854, the newly created Superintendent of Common Schools for the state was charged with

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"advising" the superintending school committees "in methods of ascertaining the qualifications of teachers for their duties."

Still later in 1923 the authority to certify teachers was vested in the Commissioner of Education under sec. 1751 of Chapter 201 which reads as follows:

... No certificate shall be granted to any person to teach in the public schools of the State unless he furnishes evidence of good moral character and meets such requirements as to preliminary education and training as may be prescribed by the commissioner.

The most recent change in certification was enacted by the 103rd Legislature in 1967 by replacing the word "commissioner" with "Board of Education" in the section stated above. This is a rather major change in keeping with recent trends in Maine to separate the policy-making functions from the executive functions at the state level.

A major revision of the certification requirements was completed in 1963 following a five-year study by a special committee of educators and laymen established by the State Board of Education. The specific requirements for the various types of certificates are compiled and distributed in pamphlet form by the State Department of Education.

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5 Maine, State Laws (1854), c. 89, sec. 11.

6 Maine, Revised Statutes, Annotated (1964), c. 201, sec. 1751.


It is a prerequisite to lawful employment as a teacher, or for recovery of wages under his contract, or to seek redress of its breach that such person have a lawful certificate as a teacher. It is on these points that the courts have had occasion to consider certification.

The Maine Supreme Judicial Court has consistently upheld the principle that teachers are unauthorized to teach without the required certificate. In *Jackson v. Inhabitants of Hampden*, the Court held that, "... A teacher is not authorized to teach, and cannot recover pay therefore, without the requisite certificate."  

In *Dore v. Billings*, the Court said in part:

> ... Although a teacher of a public school may not be entitled to recover her wages, by reason of having neglected to obtain the certificate required by the statute, yet the town alone is entitled to raise that objection.

Later, in *Jose v. Moulton*, the Court once again confirmed this point by saying in part, "... A person teaching a school without the required certificate is by the statute barred from recovering pay of the town."

The last case to reach Maine's highest court in which certification was considered was in 1948. In *Perkins v. Inhabitants of the Town of Standish*, the plaintiff, a teacher


11 *Jose v. Moulton*, 37 Me. 367 (1853).

12 *Perkins v. Inhabitants of the Town of Standish*, 143 Me. 253, 62 A (2d) 321 (1948).
by the name of Doris Perkins, sought to recover wages for the balance of the school year after her alleged wrongful discharge. She had been employed on January 6, 1947, to finish out the school year for a teacher who had resigned. She had no teaching certificate at the time of employment, although she had held a valid certificate some eight or ten years before. She informed the superintendent of this fact at the time of employment. He told Mrs. Perkins that it would be all right to accept the position without a certificate "if she would apply for one at Augusta."

Mrs. Perkins started teaching on January 13 and taught through to January 24 for which service she was paid. On January 24 she was informed by the superintendent that her employment was at an end, the reason given that she did not have a teacher's certificate. Although it is not apparent from the facts of the case, one may assume that her performance in the classroom was unsatisfactory, and, rather than follow the dismissal proceedings, the school committee chose this alternate method for a fast and legal termination of the contract. In finding for the town of Standish, the Court confirmed earlier decisions that a teacher may not teach without holding a valid teaching certificate. It said in part:

... Under these sections of the statute, the actual holding of a state teachers' certificate by the plaintiff was a condition precedent to the authority of the town to employ her, and it was a condition precedent to her right to teach; such conditions precedent cannot be waived by the town or anyone acting in its behalf. ...

It would indeed be incongruous to hold that a person could recover as damages, for not being allowed to teach,
wages which she could not recover had she actually taught for the term for which she was employed, or which received therefor, she would have forfeited to the town.13

Revocation. Along with the authority to grant a teaching certificate is the authority to revoke or annul a certificate. This authority still rests with the Commissioner. The pertinent part of the statute reads as follows:

... Any certificate granted under this or any preceding law may for sufficient cause be revoked and annulled. Nothing in this section relative to revocation of teachers' certificates shall be retroactive. Any teacher whose certificate has been revoked shall be granted a hearing on request before a committee. ... The hearings before this committee may be public at their discretion and their decision shall be final.14

There are no court cases of record on revocation but the Attorney General's office has twice rendered opinions on the subject. In 1943 it was stated that:

Ch. 38 of P.L. 1931 provides, "... that any certificate granted under this or any preceding law may for sufficient cause be revoked and annulled ... any teacher whose certificate has been revoked shall be granted a hearing on request before a committee, one member to be selected by the department of education, the second by the teacher involved, and the third by the other two members. The hearings before this committee may be public at their discretion and their decision shall be final." This language is sufficiently broad to give you authority to revoke the certificate of any teacher when in your opinion such revocation is justified. The law in the language I have quoted above provides for an appeal and a decision by a committee of appeal after hearing the evidence is final.15

The second opinion considered the permanency of a

13 Ibd.
14 Maine, Revised Statutes, Annotated (1964), c. 201, sec. 1751.
revoked teaching certificate. In 1963 the Attorney General said that:

A limited revocation is not possible. To revoke an instrument is to "annul or make void by recalling or taking back, cancel, repeal, reverse." Thus, the Commissioner in the present matter cancelled the teacher's certificate; he annulled it; he took it back; and he repealed it. It no longer exists. The following action is available to the Committee, affirm the action of the Commissioner, or reverse the action of the Commissioner. The latter action would require that the Commissioner issue another certificate to replace the one revoked.16

Employment

Procedures. The legal authority to employ teachers generally rests with the school committee and may not be delegated. In some states, school boards may select and employ teachers only from a list recommended by the superintendent, while in others, a school board may employ with or without a superintendent's recommendation.

In Maine the prescribed procedure for initial employment is: nomination of a teaching candidate by the superintendent; approval, ratification, or "election" of the candidate by the school committee or directors; and "employment" or placement of the teacher in a job assignment by the superintendent. It is interesting to note that the authority to employ is vested in the superintendent. In fact, the statute itself is found under duties of the superintendent rather than under the duties of school committees. This is undoubtedly a holdover from the old school-agent days. It will be recalled from

the discussion in Chapter III that the school agent, the fore-
runner of today's superintendent, was given the authority to
employ teachers without ratification by the local school com-
mittee. This system created a number of problems and con-
tributed to the eventual repeal of the school district system.
The legislature, in drafting the new legislation, wisely saw
fit to provide the school committee with veto power over the
superintendent in the matter of teacher employment. They also
provided for an emergency procedure in the event that a stale-
mate is reached between the superintendent and the board in
which either the superintendent refuses to nominate a candidate
of the board's choice or the board refuses to approve the
nomination of the superintendent. The statute provides that,
"... In case the superintendent of schools and the super-
intending school committee or school directors fail to legally
elect a teacher, the commissioner shall have the authority to
appoint a substitute teacher who shall serve until such election
is made."17

The current procedure for employment, seemingly simple
and effective, has led to a considerable amount of litigation,
however. In some instances it would appear that school com-
mittees, disenchanted with their choice of candidates, have
challenged their own employment procedures under the law as a
roundabout method of discharging teachers or breaking their

17 Maine, Revised Statutes, Annotated (1964), c. 7, sec. 161, par. 5.
contracts.

Three cases, all decided since the abolition of the district system, have reached Maine's highest court on the subject of teacher employment. The decisions reached and the opinions stated by the Justices have legal implications for Maine school officials today.

In Dennison v. Inhabitants of Vinalhaven, a teacher was offered a position to fill out the remainder of a school year, by telegram, by the superintendent, which he accepted. There had been no school committee meeting held to approve the nomination of this teacher. After having taught for two of the three remaining quarters in the school year, the teacher's employment was terminated. The reason for his discharge is not given in the facts of the case. The teacher brought an action to recover his salary for the remaining quarter because of a wrongful discharge. The defendant school committee claimed that the teacher was never legally employed.

In finding for the teacher the Court said in part:

While the authority to hire teachers was conferred on the school committee . . . a contract with a teacher, made at their request by the superintendent of schools, is valid. . . .

A contract with a school teacher by a person not authorized may be ratified by those having authority, either expressly or by acts.19

Other points of interest brought out in this case

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18 Dennison v. Inhabitants of Vinalhaven, 100 Me. 136 (1905).

19 Ibid.
include the following: a superintendent may hire teachers at
the request of the school committee since he is an instrument
of their official responsibility; a telegram contract is
valid; a school committee may ratify the employment of a
teacher, without a formal vote, by issuing payment of bills
presented for wages due; and in the absence of definite terms
in a contract, an offer of employment made in the middle of a
school year carries the inference that employment is for the
remainder of that year.

The second case, **Michaud v. Inhabitants of St. Francis**, was settled in 1928 but is still frequently quoted as a landmark case in Maine on teacher employment. Briefly, the facts of the case were as follows. A teacher by the name of Michaud had been employed to teach in a school known as the Nadeau school. She had taught in this school for two years, when in June, 1926, at a regular meeting of the school committee, it was urged by the Committee that Miss Michaud be transferred to another school known as the Jones school at the beginning of the fall term. The superintendent saw no good reason for the transfer and refused to nominate Miss Michaud for a position in the Jones school.

On August 23, the date fixed for the beginning of the fall term, two members of the school committee appeared at the Nadeau school and instructed Miss Michaud to go to the Jones school.

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school and promised her that she would be paid for her services. Miss Michaud understood that this arrangement was in opposition to the superintendent's plans, and soon after she began teaching was advised by the superintendent, by letter, that she had not been nominated as a teacher for the Jones school.

Miss Michaud continued, however, to carry on the work of the Jones school without interruption during the entire school year. She was not paid for her services and thus brought an action to recover her year's salary. The Court found in favor of the defendant, the town of St. Francis, refused to allow recovery of salary, and in its decision stated the following:

... To constitute a legal employment of a public school teacher, there must be a nomination by the superintendent, an approval of the nomination by the school committee, and an employment by the superintendent of the teacher so nominated and approved.

The committee has no authority to employ teachers and contracts of employment by it do not bind the town. One teaching under contract with the committee cannot recover from the town even though services were actually rendered and the price charged was reasonable. Persons working under the employment of town or city officers must take note at their peril of the extent of the authority of such officers. 21

The third and final case on employment was settled in 1938. A teacher by the name of Benson, without formal employment, had acted as principal of Newfield High School during the school year 1935-36. On April 26, 1936, at a regular school board meeting, he was reelected for the ensuing school

21 Ibid.
year of 1936-37 at a salary of $1020. He was not formally
nominated as principal nor, following approval of his nomina-
tion, formally employed by the superintendent as principal of
Newfield High School. The record shows, however, that he worked
at the school as principal until the Christmas vacation with
the knowledge and acquiescence of the superintendent, and that
during this time he received his salary checks regularly from
the town treasurer.

On December 28, 1936, Mr. Benson received a letter from
the superintendent stating that the school committee had
decided to ask him to resign as principal of the high school.
This he refused to do and was henceforth dismissed by the
superintendent. This resulted in an action by the plaintiff,
Mr. Benson, to recover his salary for the remainder of the
contract. Once again it appears that the school committee,
disenchanted with the services of a teacher, attempted to
dismiss the teacher on the basis of illegal employment rather
than by the regular dismissal procedures.

In finding for the plaintiff, the Court found the
contract to be valid, the dismissal illegal, and the contract
breached. The Court's opinion reads in part:

... To constitute a legal employment of a teacher in
a school union, there must be nomination by the superin-
tendent an approval of the nomination by the committee,
and an employment by the superintendent of the teacher so
nominated and approved. The school committee has no
authority to employ a teacher.

After legal election of the plaintiff, it was the duty
of the superintendent to employ the one elected and the
presumption obtained that he performed his duties as
required by law...
While only the superintendent could employ the teacher, the power of dismissal was vested alone in the committee, but only upon notice and investigation; and then could be lawfully dismissed only for proven unfitness or for services it deemed unprofitable to the school.

It is not expected that boards of this kind act with great formality nor that their records are as full and explicit as those of a legislative body or a court; and it undoubtedly often happens that the selection of teachers is made after a general discussion between the committee and the superintendent in which all reach an agreement without a formal nomination having been made by the superintendent and without a formal approval having been registered by the committee.22 (Italics mine)

These three cases leave little doubt as to the proper procedures to be followed in the employment of teachers. While the procedure may be informal, even to the point of an oral contract, or a telegram confirmation, or of no formal school committee action, the employment of a teacher is valid by subsequent acts of the school committee which may include authorizing vouchers for their salary checks. The "employment" or actual job assignment of a teacher by the superintendent is absolutely essential and the school committee may not usurp this authority.

Contracts and tenure. Maine teachers serve under one of two types of contracts, the probationary, or the continuing contract. The statute reads in part as follows:

... He shall nominate all teachers, subject to such regulations governing salaries and the qualifications of teachers as the superintending school committee or school directors shall make, and upon the approval of nominations by said committee or directors, he may employ teachers so nominated and approved for such terms as he may deem

22 Benson v. Newfield, 136 Me. 23, 1 A (2d) 227 (1938).
proper, subject to the approval of the school committee or school directors. Except that after a probationary period of not to exceed 3 years, subsequent contracts of duly certified teachers shall be for not less than 2 years, and unless a duly certified teacher receives written notice to the contrary at least 6 months before the terminal date of the contract, the contract shall be extended automatically for one year and similarly in subsequent years, although the right to an extension for a longer period of time through a new contract is specifically reserved to the contracting parties.

The right to terminate a contract, after due notice of 90 days, is reserved to the superintending school committee or school directors when changes in local conditions warrant the elimination of the teaching position for which the contract was made.\(^2\)

Probationary contracts are usually issued a year at a time for the first three years of employment. A school committee is under no obligation to renew a probationary contract, nor are they under any obligation to provide a hearing or reasons for not renewing a probationary contract. It should also be noted that a continuing contract may be awarded earlier than the fourth contract. The statute requires only that the probationary period not exceed three years.

While the statute quoted above contains no reference to tenure, it is reasonably clear that the intent of the legislature in providing continuing contracts is to make available to the successful teacher a measure of security and protection through continued employment. Tenure legislation varies in the several states from that which provides merely that the teacher's contract shall continue from year to year unless the teacher is notified within a specified time that it will not

\(^2\)Maine, Revised Statutes, Annotated (1964), Title 20, c. 7, sec. 151, par. 5.
be renewed, to more elaborate systems which provide that after a stated probationary period the employment becomes permanent, allowing dismissal only for stated specific causes. The probationary period varies from one year in some states to five years in others. During the probationary period, the teacher may be dismissed at the end of the year for any or no reason, but once his tenure has become permanent he may be dismissed only for causes stated in the law. Thus, there is a distinct difference between failure to renew a contract and the breaking of a contract or dismissal.

The tenure status of Maine teachers is not entirely clear under the continuing contract. Another section of the statute on contracts cited earlier reads as follows:

. . . After a probationary period of 3 years, any teacher who receives notice in accordance with this section that his contract is not going to be renewed, may during the 15 days following such notification request a hearing with the school committee or governing board. He may request reasons. The hearing shall be private except by mutual consent and except that either or both parties may be represented by counsel. Such hearing must be granted within 30 days of the receipt of the teacher's request.\textsuperscript{24}

This section of the statute has not been interpreted by the courts, except for the "15-day" clause. In a case decided so recently that it is not included in the latest Maine Report, the Supreme Judicial Court held unanimously that the dismissal of a teacher serving under a continuing contract was not invalid because the school superintendent and school committee failed\textsuperscript{24}

\textsuperscript{24}Ibid.
to explain adequately the failure to renew her contract. While the teacher had asked for "an explanation" following the notice, she failed to request a hearing within the 15-day period specified in the statute. In its ruling the Court noted that:

... [T]he superintendent did not answer the request for an explanation, but the failure to give desired information has no bearing upon the fact that at no time within the statutory 15-day period from the Feb. 3 notice did Mrs. Beckwith request a hearing.25

The Court also pointed out that the statute does not provide that dismissed teachers be notified of their rights to hearing or rights to request reasons for the dismissal before a hearing. And it added:

There was thus no failure on the part of the school authorities to advise Mrs. Beckwith of her rights under the statute. She must be held to have knowledge of the statutory requirements and she must suffer such loss as may have risen from her failure to comply with the plain terms laid down by the legislature.26

Except for the "changing conditions" clause cited earlier, the reasons for which a teacher's continuing contract may be terminated have never been defined. There is considerable confusion between this section of the law and the dismissal statute which will be discussed later.

A case to reach the Maine Supreme Judicial Court in 1941 upheld the validity of an oral contract. In Elsemore v. Hancock,27 a teacher was contracted orally by the

26 Ibid.
27 Elsemore v. Inhabitants of Town of Hancock, 137 Me. 243 (1941).
superintendent to teach at Hancock High School during the school year of 1939-40. His employment was ratified by a meeting of the school committee on May 3, 1939. During the summer of 1939, however, the town of Hancock, at a special town meeting, voted to close the high school. Following this action, the school committee voted to terminate the contract of the teacher, a Mr. Elsemore. The teacher brought an action to recover his salary in the amount of $775 for breach of contract. The defendant town of Hancock argued that the teacher did not hold a valid contract since the teacher was employed without a written contract; was employed at a school committee meeting during which one of the three members was not present; and that the town of Hancock terminated its liability under the contract by its vote to close the school.

In finding for the teacher the Court held that the affirmative vote by the two members of the school committee present constituted a legal employment; and that the abolishment of a school did not negate the contract of a teacher employed to teach it. Evidently the school committee had failed to give Mr. Elsemore the 90-day notice of elimination of his teaching position. On this point Justice Murchis said in part:

The continuing supremacy of the State, if exerted for the common good and welfare, can modify the contract . . . but in the case of a teacher losing his contract because of the closing of the school, there is no implied limitations of the contract, therefore the town does not terminate its liability.
Where the contract is to do acts which can be performed, nothing but the act of God or of a public enemy or the interdiction of the law as a direct and sole cause of the
failure will excuse the performance.\textsuperscript{28}

Several Attorney General opinions have been rendered pertaining to contracts or tenure which are pertinent to the present discussion. In 1961 it was held that the matter of contracts between teachers and superintending school committees for employment is a local question and the communities involved may determine the dates at which the contracts will begin and terminate.\textsuperscript{29} It was held in 1951 that part of a probationary period served in one municipality will not serve as part of the probationary period required by another municipality.\textsuperscript{30} Also in 1951 it was held that when a probationary period is required as a prerequisite to permanent employment, interruption of that probationary period nullifies any benefits secured prior to the interruption.

Newly organized school administrative districts are obligated to honor contracts between member towns and teachers which are in effect at the time of the merger. Thus, teachers serving on a continuing contract in a local district are entitled to the same status in a reorganized school administrative district. The pertinent statute reads in part as follows:

\textsuperscript{28}\textit{Ibid.}
\textsuperscript{29}\textit{Attorney General Report} (1961), p. 104.
\textsuperscript{30}\textit{Attorney General Report} (1951), p. 57.
\textsuperscript{31}\textit{Ibid.}, p. 58.
On the date that the School Administrative District becomes operative, the contracts between the municipalities within the district and all teachers shall automatically be assigned to the School Administrative District as of the date so set and the School Administrative District shall be responsible for assigning the teacher to his duties and making payments upon said contract.32

Of course this would not hold in the case of a position being eliminated as a result of the merger. It should be noted that this protection for teachers does not apply in the formation of school community districts.

The law is silent on the matter of teachers' terminating contracts. Of course a contract can always be terminated by mutual consent of both parties. The matter of a teacher resigning before the end of the contract period has never been brought before the Maine courts. In the absence of a specific clause in the contract to the contrary, common law practice would suggest that a teacher may terminate a contract upon a written notice of thirty days. The standard contract form recommended by the Maine Teachers Association and widely used throughout the state, prohibits a resignation, except by mutual consent, during the months of July, August, and September.

Dismissal. The subject of dismissal of teachers occupies a prominent place in the literature. That monumental study by Edwards, referred to several times in this study, devotes some thirty pages to the topic. Court cases on dismissal are plentiful in jurisdictions all over the country.

32 Maine, Revised Statutes, Annotated (1964), c. 9, sec. 224.
A school committee may dismiss a teacher for such causes and in such manner as is prescribed by statute. It is a well-established rule, of which teachers should be cognizant, that all pertinent provisions of the statutes are, by implication, read into contracts of employment. Thus, it was said by Justice Harris, speaking for the Supreme Court in Oregon:

The contract of teaching is made with reference to the provisions of the statute, so that the contractual obligations of the teacher are not necessarily limited to the words found in the written contract, and therefore the contract of teaching includes not only the duties enumerated by the written paper, which for convenience is called the contract, but it also embraces those duties which are imposed under a then-existing statute; and if the teacher breaches this contract of teaching, one of the ordinary legal remedies available to the school board, unless some statute declares to the contrary, would be found in the right summarily to discharge the teacher.33

The Maine statute on dismissal is remarkable for its simplicity. It is found under the duties of school committees and reads as follows:

After investigation, due notice of hearing, and hearing thereon, they shall dismiss any teacher although having the requisite certificate, who proves unfit to teach or whose services they deem unprofitable to the school; and give to said teacher a certificate of dismissal and of the reasons therefor, a copy of which they shall retain. Such dismissal shall not deprive the teacher of compensation for previous services.34

It should be emphasized here that the teacher serving under a probationary contract, while having no remedy for failure of a

33 Foreman v. School District No. 25, 81 Ore. 587, 159 Pac. 1155.

34 Maine, Revised Statutes, Annotated (1964), c. 15, sec. 473, par. 4.
school committee to renew his contract, is protected from breach of contract or dismissal during the term of the contract, at least to the extent of a hearing and a certificate of dismissal stating the reasons therefor.

As would be expected, controversies over the dismissal statute have centered around two points, the mechanics or procedure of dismissal, and interpretation of the phrases "unfit to teach" and "services deemed unprofitable to the school."
The Maine Supreme Judicial Court has heard two cases, one involving procedure and the other interpretation of the language. Although both cases were settled many years ago they are landmark cases for Maine and are still useful as guidelines.

In the first case a schoolmaster by the name of Farwell was contracted to teach school in Searsmont for a period of three months. After two months on the job, he was discharged by the school committee after the committee received a petition from the inhabitants alleging that for want of natural abilities he was not qualified to teach in their school. No notice of discharge was given nor was a hearing held.

Mr. Farwell continued, however, to instruct the school for another month and brought an action to recover his wages. The plaintiff argued that his contract had been breached and that the dismissal was illegal since the order of discharge given by the committee did not contain any express adjudication respecting the fitness or unfitness of the instructor, nor was
any hearing held. The defendant claimed, on the other hand, that the committee was not bound to render any reasons for the dismissal of a schoolmaster, the law having made the contract subject to their discretion. They argued that an instructor is continually under a course of trial, and the committee may adjudicate whenever they are satisfied, without a more formal notice or hearing.

The attorney for the plaintiff countered with the argument that it was as important to the community that schoolmasters be protected from unfounded popular caprice and disaffection, as that none but fit teachers be employed and that the powers granted to school committees should be interpreted as all other limited powers, and like them, to be strictly pursued. The committee might, he said, upon proper application, summon the party before them, and after due hearing and examination, might for good cause dismiss him but this they failed to do.

The Court decided in favor of the schoolmaster. While the facts of the case suggest that there was sufficient evidence upon which to dismiss the master legally, the school committee failed to follow the proper procedure as prescribed by law.

Excerpts from the opinion follow:

... The third section of the law, provides that "Said committee shall have power to dismiss any schoolmaster or mistress, who shall be found incapable, or unfit to teach any school, notwithstanding their having procured the requisite certificates." This, being an authority given to those who represent one party only, to vacate a contract, must in our opinion be strictly
pursued according to the provisions of the act, to have that effort. The superintending committee, not binding or assigning the reasons, which by the act would authorize them to discharge the master, he cannot therefore be considered as having been discharged, by any adequate or competent authority.35

The other case to reach Maine's highest court was *Hopkins v. Bucksport* in 1920.36 In this case the Court was called upon to interpret the meaning and legislative intent of the clauses "unfit to teach," and "services deemed unprofitable to the school."

Lucinia Hopkins, a teacher of seventeen years experience, was duly employed to teach a school in Bucksport for the school year beginning in September, 1918. At a meeting of the School Committee of Bucksport on September 16, 1918, Mrs. Hopkins was dismissed from her job as her services in the judgement of the Committee would "be unprofitable to said school on account of her admitted associations with a German Alien Enemy of the United States of America, under suspicion and under investigation at this time by the Government."37 Mrs. Hopkins had been given due notice of the meeting to consider her dismissal but had not been provided with any reasons for such action prior to the meeting. Mrs. Hopkins did not attend the meeting. Her dismissal resulted in an action brought by Mrs. Hopkins to

35 *Inhabitants of Searsmont v. Farwell*, 3 Me. 450 (1825).
36 *Hopkins v. Inhabitants of Bucksport*, 119 Me. 437, 111 A. 734 (1920).
37 Ibid.
recover her salary for the 1918-19 school year because of a wrongful discharge or breach of contract.

It appears from the testimony that in the summer of 1918 Mrs. Hopkins purchased an automobile to enable her to teach in Bucksport, and to return to her home in Verona each night on account of her mother's illness. Her husband had secured the services of a Mr. Margraf to teach her to drive the automobile. Mr. Margraf was a German alien. He was also a summer neighbor of the Hopkins whom they had known for several years.

It does not appear from the record that any complaint against or criticism of Mrs. Hopkins had been lodged with the Committee, nor does it appear that Mr. Margraf was in fact a German alien enemy under investigation by the Government or that the Committee had any evidence to that effect.

Judgement was found in favor of Mrs. Hopkins and she was awarded her year's salary. Among the findings of the Court were the following:

... The authority given by statute to a superintendent school committee to vacate a contract, being an authority given to those who represent one party only, must be strictly pursued according to the statutes to have that effect.

The statute in question authorizes the dismissal of a teacher upon two grounds: Unfitness to teach, and failure of practical success in the work of the school rendering the teachers services unprofitable to the school; the first may be apparent either before or after the work of the school has begun; but failure of practical success in the work of the school can only become apparent after the work has actually begun.

It is evident that these causes may run into each other; yet they are substantially distinct. Unfitness to
teach, including in that term moral and tempermental unfitness as well as a lack of educational training and ability, may be apparent either before or after the actual work of the school has begun; but failure of practical success in the work of the school can only be apparent after the work has begun.

The action of the committee in this case cannot be sustained. The fitness of the plaintiff to teach the school is conceded; she should have had the opportunity to show practical success in the school work.

Furthermore, the action of the committee can only be taken "after due notice and investigation." The statement in the record before the court is insufficient as notice to the plaintiff of the object of the meeting at which action was taken dismissing her.

The clause, "or whose services they deem unprofitable to the school" is first found on the R.S. of 1841 in the form "or whose services are believed by them to be unprofitable to the school." This cause of dismissal was evidently introduced into the statute to cover cases frequently arising where from some cause it is apparent, after the school has begun that the teachers usefulness has become impaired, and that the good of the school requires dismissal. Such action can only be justified as for the good of the school and can only be taken after notice and "candid" investigation.

The notice to Mrs. Hopkins of the object of the meeting was wholly insufficient; from it she could not know what reason her dismissal was sought, whether upon the grounds of moral unfitness, tempermental unfitness, or lack of educational qualification; much less whether it was sought on the ground that her services were deemed unprofitable to the school. She was entitled to know in advance on what ground her dismissal was sought. This, she did not have.38

A much more recent case was settled in a Superior Court action on a teacher dismissal case in 1962. While not binding on the Maine Supreme Judicial Court, the case is significant because the findings show that the judicial interpretation of the dismissal statute has not changed since the first case in 1825.

38Ibid.
In Richard Mainente v. Inhabitants of Mechanic Falls, a complaint was heard by the Court in which a teacher sought to recover the balance due him under a teaching contract for the school year of 1963-64 as a result of an alleged illegal dismissal. Mr. Mainente received a letter from the superintendent of schools dated January 27, 1964. Excerpts from this letter which were entered into the court record follow:

... The Mechanic Falls School Committee at its last meeting on January 25th, voted to notify you that after careful consideration and investigation of the facts concerning your teaching that they feel that it would be in the best interest of the students, the school, and yourself if you were released from your teaching position as of the February vacation. This letter would serve as an official notice that as of 30 days from today, which would be February 27th, that you would be released, unless conditions changed to such an extent that a reconsideration could be possible. From all indications it would be very unlikely that conditions could change enough to make such a reconsideration possible.

In all we regret that it is necessary to have to notify you of this decision, but it is felt by all that it would be in the best interest of all if a change could be made at the time of the February vacation.

If you wish to meet with the board to go over their decision, I'm sure they would be glad to meet with you during their next meeting or at a special meeting. (Italics mine)

In delivering the verdict for the teacher, Superior Court Justice Marden said, in part:

... The law in Maine having to do with the dismissal of a teacher is embodied in the statute cited and three litigated cases, two under former statutes and one under the statute in its present form. The cases are: Searsmont v. Farwell, 3 Maine 450; Hopkins v. Bucksport, 39

39 In the matter of Richard Mainente v. Inhabitants of Mechanic Falls, Androscoggin County, Maine, Superior Court, June Term, 1962.

40 Ibid.
119 Maine 437; and Benson v. Newfield, 136 Maine 23.

All of these cases hold that the authority of a superintending school committee to vacate a contract "being an authority given to those who represent one party only, must be strictly pursued according to the provisions of the statute."

The statute requires: (1) due notice to the teacher; (2) investigation by the superintending school committee; (3) finding based upon sufficient evidence that, a) the teacher is "unfit," or b) that the teacher's services are deemed unprofitable to the school; and (4) giving to the teacher a certificate of dismissal and of the reasons therefor.

It is determined that there was valid cause for the termination of this contract.

While a superintending school committee may not be expected to follow the terms of a statute with the technical niceties which are expected from a legal tribunal, we cannot, within the circumscription of the cases cited, hold that the action of the committee of the defendant in: (1) dismissing the plaintiff; (2) giving notice of the dismissal for reasons not specifically identified with the statutory causes; (3) investigating; and (4) giving the plaintiff a hearing, in that order, complied with the statute. 41

As in the Searsmont case, it appears from the facts presented that there might have been valid reasons for dismissal but once again the committee failed to adhere strictly to the provisions of the statute in terms of procedure.

Compensation. The authority of a school committee to set and regulate salaries for teachers is found in Chapter 7, section 161, paragraph 5 as follows:

He shall nominate all teachers subject to such regulations governing salaries and the qualifications of teachers as the superintending school committee or school directors shall make. 42

41 Ibid.

42 Maine, Revised Statutes, Annotated (1964), c. 7, sec. 161, par. 5.
This authority, of course, must conform to other pertinent statutes on compensation. There are two such laws, one regulating minimum salaries and the other ensuring equal pay for men and women holding comparable positions. The first reads in part as follows:

Each administrative unit operating public schools within the State shall employ only certified teachers and after July 1, 1966 shall pay such teachers, except substitute teachers as defined by the commissioner, the minimum salaries as follows.43

Figures are not here quoted since they were revised by the 103rd Legislature to become effective in September, 1968.44 The latest minimum starting salary with a bachelor's degree and no experience is $5,000. The second statute reads as follows:

In assigning salaries to teachers of public schools in the State, no discrimination shall be made between male and female teachers, with the same training and experience, employed in the same grade or performing the same kinds of duties.45

Except for a few very early cases under the old school district system when school agents established the salaries, none have reached the courts where compensation was the principal point of contention. It would appear that local administrative units have been able to resolve their own salary conflicts with the aid of an occasional opinion from the Attorney General's office. Those opinions include the following:

43 Ibid., c. 209, sec. 1901.
44 Nickerson, op. cit., 17.
45 Maine, Revised Statutes (1954), c. 41, sec. 238.
"(1) No discrimination shall be made between male and female teachers of public schools who have the same training, experience, and duties. Specific questions relative to grading, academic load, etc. are administrative problems and can be answered more easily by local officials, giving common, every-day meanings to the words used in the law."46

"(2) All certified teachers, whether regularly employed by the superintending school committee on nomination by the superintendent or working on a substitute basis, but possessing the required certificate, are entitled to be paid the minimum salaries prescribed."47

"(3) The superintending school committee has no right to make a reduction in the salary paid to a teacher who does not receive notice of termination of contract or a new contract."48

"(4) Relative to the minimum salary law, service teaching in private schools such as Westbrook Junior College counts as years of teaching experience."49

An interesting question, which remains unanswered at this time, is the legality of a contract executed between a teacher and a school administrative unit containing a raise for the ensuing year, prior to formal approval of the new school budget by the voters of the district.

Retirement. All teachers in the Maine public schools are required to be members of the Maine State Retirement System. Five and three quarter percent is deducted from their salaries; 5 percent toward Member Contribution Fund, 1/4 percent toward the Survivor Benefit Fund, and 1/2 percent toward the Retirement Annuity Adjustment Fund. This last is the provision that

46 Attorney General Report (1952), p. 120.
enables retirees to receive increases whenever the state employees receive pay raises. The state contributes about $8-1/2 million annually toward the Retirement System, which includes state employees as well as teachers. 50

Members are eligible for retirement on attaining age 60 or after 30 years of service (at a reduced rate) regardless of age, and must retire on attaining age 70, except that on request of the Governor, with the approval of the Council, the Board of Trustees of the Retirement System may permit employment past age 70. The maximum pension may be attained after 35 years of service and is an annual stipend which amounts to 50 percent of the "average final compensation." This is defined as the average salary for the highest five years which do not necessarily have to be consecutive.

Additional rules and regulations as well as the optional plans are described in detail in a handbook published by the Maine State Retirement System, 51 and need not here be enumerated. There are no court cases of record concerning retirement. The Attorney General's office has, from time to time, been asked to clarify certain points in the regulations. A summary of these opinions follows:

"(1) Local school committees do not have the authority


to establish a regulation making teacher retirement compulsory prior to age 70." 52

"(2) Teachers reaching their seventieth birthday during the school year may be permitted to continue teaching until the end of the year with special permission." 53

"(3) A teacher retiring without the full thirty years of credit may make up time for full credit by substituting a day or two at a time." 54

"(4) Teaching at the Maine School for the Deaf counts as creditable service." 55

"(5) Substitute teaching after retirement on a part-time basis will not impair pension payments." 56

In connection with the last opinion cited it should be noted that there is a limitation on the amount of substitute work that a retired teacher may perform. The annual salary earned as a substitute plus the amount of the pension may not exceed the five-year average used as a basis for computing the pension.

Collective Bargaining

Introduction. Collective bargaining, or collective negotiations, or professional negotiations in the field of education are all synonymous terms and used interchangeably by various groups. The legal right of teachers to bargain collectively with their employers is becoming more common in

the various states. Legislation on the subject was introduced in fifteen legislatures and enacted in at least seven in 1965.\textsuperscript{57} Although there is not yet any legislation in Maine on the subject, a bill was introduced in the special session of the 103rd Legislature. This bill was not passed but another one is being prepared for consideration by the 104th legislative session. The latest handbook of the Maine Teachers Association includes the following comment:

...Probably the biggest movement in education in Maine is in the area of professional negotiations. Local associations are seeking written agreements with their school boards so that the association will be officially recognized as the bargaining agent for the teachers, specific guidelines for negotiations will be established, and provisions will be made in the event that an impasse occurs.\textsuperscript{58}

A recent publication from the Association cited the fact that as of that date, there were fifteen negotiating agreements between school committees and teacher organizations in force and some forty more in process of development.\textsuperscript{59}

The advent of collective bargaining in the field of education is too new for any clear-cut guidelines to have been established. As stated by Edwards,\textsuperscript{60} the law governing the authority of school boards to negotiate with teachers' unions

\begin{itemize}
\item \textsuperscript{58}Maine Teachers Association, \textit{op. cit.}, p. 22.
\item \textsuperscript{60}Edwards, \textit{op. cit.}, p. 473.
\end{itemize}
is still in the process of development. In the absence of any statutes or litigation on the subject in Maine, educators are forced to turn to other jurisdictions for guidelines. This final section will, therefore, briefly consider the current status of collective bargaining in other states.

Teacher strikes. The strike is one of the most controversial and the most widely publicized source of teacher bargaining power. The courts are in agreement that teacher strikes are illegal even in the absence of specific legislation. Teacher strikes were prohibited by law in at least fifteen states as of 1965. In addition, six state courts have ruled that teacher strikes are illegal even in the absence of legislation. In the opinion of a noted writer on the subject, "It is likely but not certain that other state supreme courts would also rule teacher strikes to be illegal if they were called upon to resolve the issue."

In labor organizations generally, the right of employees to strike is deemed an incident of the right to organize. However, the right of teachers to organize, as in the case of other public employees, does not necessarily carry all the benefits and privileges possessed by members of unions of nonpublic employees. Perhaps the most important difference in the rights of members of organizations of public and nonpublic labor organizations is the right to strike.

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61 Lieberman, op. cit., p. 289.
62 Ibid., p. 290.
It is well established that the members of labor unions generally may strike in order to enforce their demands. This rule is not applicable to unions of public employees, including teachers. In a leading case on the point it was held that teachers may not strike.\(^{63}\) The Supreme Court of Connecticut stated that it should be the aim of every employee of the government to do his or her part to make the government function as efficiently and economically as possible. The drastic remedy of the organized strike to enforce the demands of unions of government employees was, in the opinion of the court, in direct intervention of this principle. The main basis for this rule is the absence of the profit motive on the part of the public employer and the necessity that there be no interruption in the operation of public functions because of the serious consequences which would ensue if they were interrupted. Thus the right of the public to have its children taught takes its place beside the public right to fire and police protection, the right that courts shall continue to function, and other similar rights. The Supreme Court of New Hampshire has reached the same conclusion.\(^{64}\)

While most persons assume that strikes by teachers are illegal, there is some precedent for a different point of view and the issue is by no means settled. According to a state

\(^{63}\)Norwalk Teachers' Association v. Board of Education, 138 Conn. 269, 83 A. 2d 482 (1951).

\(^{64}\)City of Manchester v. Manchester Teachers Guild, 100 N.H. 507, 131 A. 2d 59 (1957).
district court in Minnesota, the view that public employees cannot strike is:

... [T]o indulge in the expression of a personal belief and then ascribe to it a legality on some tenuous theory of sovereignty or supremacy of government. ... The right to strike is rooted in the freedom of man, and he may not be denied that right except by clear, un-equivocal language embodied in a constitution, statute, ordinance, rule, or contract.65

The decision in this case was upheld by the Minnesota Supreme Court in 1951.66

Despite the fact that there are many states which have passed legislation prohibiting strikes, teachers are continuing to strike in widely scattered sections of the country, including those jurisdictions with anti-strike laws. In some situations such laws actually encourage strikes. Penalties may be so severe that public officials are afraid to impose them. The New York City teacher strike in 1960 was settled in part on the stipulation that there be no reprisals against striking teachers.67 A recent release from the Associated Press68 reported on strikes in Washington, D.C., Florida, Pittsburgh, Pa., and Waterbury, Connecticut. It also noted that the teachers in the City of Chicago had voted to strike unless certain demands were met. In the Waterbury strike, the Superior Court has ordered the

65 Lieberman, op. cit., p. 298.
67 Lieberman, op. cit., p. 40.
teachers to justify their strike action. This may imply that
strikes are legal if they can be justified by the teachers.

At the moment, the weight of legal authority appears to
be that teacher strikes are illegal with or without anti-strike
laws. This principle may be undergoing a change, however, and
only future decisions will establish more definite guidelines.

Right to organize. The right of teachers to organize
as a group or union for purposes of engaging in collective
bargaining has generally been upheld by the courts when no
threat of strike is present. Thus in the Norwalk case cited
earlier, the court was asked to give an opinion on this
question, "Is it permitted to the plaintiff under our laws to
organize itself as a labor union for the purpose of demanding
and receiving recognition and collective bargaining?" The
court's answer, in part:

The statutes and private acts give broad powers to
the defendant with reference to educational matters and
school management in Norwalk. If it chooses to negotiate
with the plaintiff with regard to the employment, salaries,
grievance procedure and working conditions of its members,
there is no statute, public or private, which forbids such
negotiations . . .

If the strike threat is absent and the defendant pre-
fers to handle the matter through negotiations with the
plaintiff, no reason exists why it should not do so.69

Sanctions. Sanctions constitute another means which
teachers use to enhance their bargaining power. In 1962,
the NEA's Representative Assembly authorized the use of
sanctions and defined them as "appropriate disciplinary action

by the organized profession."\textsuperscript{70}

Various types of sanctions can be applied by local, state, or national associations. Sanctions applied by local associations include statements of censure, withholding of contracts during negotiations, and avoidance of extracurricular activities. Sanctions applied by state associations may include public statements of censure, including statements that conditions in a school district are unsatisfactory; withdrawal of placement services; requests that teachers not accept employment in a system; and legal action to compel improvements or equitable procedures.

Sanctions have been used in different ways around the country since they were formally authorized in 1962. They have been used on a statewide basis in Utah and Oklahoma. On a local level, sanctions have been used in such diverse school districts as Little Lake, California; Waterbury, Connecticut; Dade County, Florida; Asbury Park, New Jersey; and Stratford, Connecticut.\textsuperscript{71}

Sanctions have been imposed by the Maine Teachers Association in Maine's two largest cities, Lewiston and Portland. In Portland, sanctions have been imposed twice within the last two years. Because of the implications for the rest of the state, this local situation will be reviewed in the


\textsuperscript{71}Lieberman, \textit{op. cit.}, p. 304.
Another form of sanctions is the withholding of salary agreements. Public school teachers holding continuing contracts, such as Connecticut and Maine teachers, after a probationary period, receive an annual salary agreement form or notice which is entirely separate from the continuing contract. Thus, teachers can refuse to sign the annual salary agreement without jeopardizing their employment status. They simply serve notice that the teacher considers himself under contract to teach in the district, but is not signing the annual salary agreement because the salary terms offered by the board are unsatisfactory. This technique was utilized in the first Portland sanction two years ago.

The legality of the sanction has yet to be tested in the courts. Also the right of a teachers' union to negotiate under the threat of sanction, or during a sanction has no legal precedent. At least one state official thinks this is not the point. The executive secretary of the New Jersey Education Association expressed his views at a recent conference as follows:

Legality may not be the crucial issue. The argument that an extreme sanction is legal while a strike is not is not impressive. Both involve the withdrawal of service, and in both the children miss certain expected schooling. The extreme sanction—the resignation of teachers and blackballing of the district—even though it may be legal, can have a far more devastating effect upon children than the typical brief teacher strike. In my book any work stoppage, legal or illegal, is a strike. A strike is a sanction and an extreme sanction is a strike. 72

72 Ibid., p. 308.
Negotiation agreements. The legal authority of a school committee to enter into a negotiation agreement with a teachers' organization, without state legislation is not clearly established. What little authority there is at the present time suggests that the practice is legal if no threat of strike is present and the items to be negotiated are proper ones, i.e., items which the school committee may properly delegate to a third party. It is the latter question which has raised considerable question and disagreement. The definition of items which are negotiable will undoubtedly need to be defined by the various state courts in keeping with existing statutes.

The Norwalk case paved the way for negotiation agreements. Justice Jennings expressed the court's opinion on the subject in the following manner:

... The statutes and private acts give broad powers to the defendant with reference to educational matters and school management in Norwalk. If it chooses to negotiate with the plaintiff with regard to the employment, salaries, grievance procedure and working conditions of its members, there is no statute, public or private, which forbids such negotiations. It is a matter of common knowledge that this is the method pursued in most school systems large enough to support a teachers' association in some form. It would seem to make no difference theoretically whether the negotiations are with a committee of the whole association or with individuals or small related groups, so long as any agreement made with the committee is confined to members of the association. If the strike threat is absent and the defendant prefers to handle the matter through negotiations with the plaintiff, no reason exists why it should not do so.

The claim of the defendant that this would be an illegal delegation of authority is without merit. The authority is and remains in the board.73

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A key point concerning negotiations agreements is that of whether the school committee may terminate the agreement at will. Another is whether or not an agreement is considered to be a legal contract. As of 1965, no court has declared a collective agreement terminable at will by a public agency to be illegal. 74 Whatever their form and regardless of their contractual status, collective agreements in education are becoming more common.

Existing legislation differs markedly in the scope of negotiable items included. Some statutes include only salaries and other conditions of employment while others include educational objectives, content of courses and curricula, selection of textbooks, in-service training, hiring and assignment practices, salary schedules and noninstructional duties. 75

Of particular interest to Maine educators might be the provisions of the recently enacted legislation in Massachusetts on the subject. The Massachusetts statute was originally sponsored by the Massachusetts affiliate of the American Federation of State, County and Municipal Employees (AFL-CIO), not the American Federation of Teachers. After affecting some changes in the proposed bill, the Massachusetts Teachers Association joined with the AFSCME as a co-sponsor. The bill, which applies to all public employees, including teachers, was signed into law in November, 1965. 76

74 Lieberman, op. cit., p. 328.
75 Ibid., pp. 447-469.
76 Ibid., p. 49.
The statute guarantees employees the right to join organizations and to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment and to engage in other concerted activities. Strikes are prohibited, but fact-finding with preliminary investigations by the state board of conciliation and arbitration is provided.

The State Labor Relations Commission is authorized to conduct representation elections, to select exclusive bargaining agents, to determine appropriate units of representation, and to enforce the prohibited practices section of the statutes. Employer practices which are prohibited include: interfering with the rights of employees; dominating or interfering with the formation, existence or administration of any employee organization; and refusing to bargain in good faith. Employee organizations are prohibited from restraining or coercing a municipal employer in the selection of its representative for purposes of collective bargaining, and refusing to bargain in good faith.

The State Labor Relations Commission is given the power to issue orders requiring the parties to cease and desist from the practices prohibited by statute. The Commission is further authorized to impose penalties such as withdrawing certification of an employee organization, ordering reinstatement with or without back pay of a discharged employee, or directing either party to pay the entire costs of
fact-finding.77

The most difficult problem in drafting negotiation agreements is now, and will continue to be, that of defining "working conditions." Does class size, selection of textbooks, free lunch time, qualifications for personnel, in-service training, hiring and assignment practices, etc., constitute working conditions or are these administrative matters which cannot be negotiated even if the employer is willing to negotiate such items? These are questions which will eventually have to be decided by the courts.

Crisis in Portland. As stated earlier, Maine has no legislation on the subject of collective bargaining for teachers nor has there been any litigation as yet. The City of Portland, however, representing Maine's largest school district with over 600 teachers, has had its problems in this area in the past two or three years and they are not as yet resolved. Recent events in Portland, while not necessarily providing definitive guidelines for other Maine school districts, are worth reporting in this study since they are current and, if nothing more, may suggest procedures for both teachers and employers which will prevent similar stalemates in future negotiations.

Difficulties between the Portland Teachers Association, an affiliate of the Maine Teachers Association, and the Portland School Committee reached an impasse in 1965. The major

77 For the full text of the agreement see Appendix E.
disagreement was over a salary increase although the teachers had other grievances concerning class size, employment procedures and curriculum concerns. The refusal of the school committee to adopt the salary schedule recommended by the PTA resulted in sanctions being imposed on the school system for a period of about two months. This local sanction was supported by the Maine Teachers Association.

One of the conditions insisted upon by the teachers for lift of the sanction was an opportunity to enter into collective bargaining with the school committee. This was eventually agreed upon, the sanction was lifted, and representatives of the Portland Teachers Association and the Portland School Committee went to work in drafting an agreement.

In October, 1966, after many months of work, a negotiations agreement, acceptable to both parties, and their lawyers, was signed. With optimism on both sides, it was heralded as the beginning of a new era in public relations and in cooperation between the school board and teachers in Maine's largest public school system.

Key points of the agreement include the following:

"(1) The Portland School Committee recognizes the Portland Teachers Association as the exclusive representative of a majority of the certified personnel of this city.

"(2) The Portland Teachers Association recognizes the Portland School Committee as the elected representative of the people of Portland, Maine, and as the employer of the certified personnel of the Portland Public Schools.

"(3) The Portland Teachers Association agrees that much of the preliminary work involved in negotiations or all
of the discussion in a specific area requiring mutual understanding or agreement can be conducted between the Superintendent of Schools and representatives of the Portland Teachers Association.

"(4) The Portland Superintending School Committee recognizes the Portland Teachers Association for the purpose of negotiating proposals concerning standards for employing personnel, community support for the school system, in-service training of personnel, curriculum concerns, class size, teacher turnover, personnel policies, grievance procedures, working conditions, communication with the school system, contracts and other items of concern to the extent it is administrative or otherwise feasible.

"(5) Failing agreement between the Portland School Committee and the Negotiating Committee of the Portland Teachers Association, an impasse will be recognized.

"(6) In the event that any matter being jointly considered by the two parties is not settled in a mutually satisfactory manner by the means provided by this agreement, either party may request the assistance and advice of a Board of Review.

"(7) The Board of Review shall meet with the School Committee and the Portland Teachers Association, make inquiries and investigations, hold hearings and take such steps as it deems appropriate. It shall, within twenty days after the Board of Review holds its first hearing, make findings of fact and recommend terms of agreement. These findings and recommendations are to be made public.

"(8) The report of such third party shall be advisory only and shall not be binding on either party.

"(9) This agreement shall take effect at the time of signing the agreement and will remain in effect until June 30, 1967, or as long as the Portland Teachers Association is authorized to represent a majority of the certificated teachers of Portland. It shall be a continuing contract for a period of one year for each succeeding year starting July 1st unless changed as herein provided.

"(10) Either party desiring changes in this agreement must notify the other party in writing prior to April 1st of any negotiating contract year; however, changes may be made at any time by mutual agreement. While this is a continuing contract from year to year, if
changes are to be made, thirty days' notification shall be given by the party proposing the changes, in which case the same procedure as outlined here-tofore shall be followed.

"(11) If there is any disagreement by the School Committee or the Portland Teachers Association as to the interpretation or application of the terms of this agreement it shall be submitted to the Board of Review."

After more than a year of continuous disagreement over the interpretation of the document, negotiations once again reached an impasse. Sanctions were imposed, salary talks ceased and the School Committee initiated two court actions, one to impose an injunction on the sanction, the other seeking a declaratory judgement on whether the negotiating agreement itself was legal.

As might have been predicted, disagreement centered on the paragraph defining negotiable items. As pointed out in number 4 above, these include: standards for employing personnel, community support for the school system, in-service training of personnel, curriculum concerns, class size, teacher turnover, personnel policies, grievance procedures, working conditions, communications within the school system, contracts, and other items of concern to the extent it is administratively or otherwise feasible.

The PTA interpreted this paragraph to mean that the teachers association has a right to be consulted as changes

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78 Negotiation Agreement Between the Portland School Committee and the Portland Teachers Association, signed Oct. 24, 1966. For the full text of the Agreement, see Appendix D.
are introduced into the school system. The School Committee held that the paragraph allows the teachers to ask for negotiation of a particular item, but does not prevent the School Committee from introducing a unilateral change without prior notification and consultation.

The disagreement came to a head over administrative procedures in developing curriculum changes and setting up new positions without discussions under the negotiating agreement.

In keeping with Article III-H of the agreement, a letter request from the PTA to the School Committee for the appointment and advice of a Board of Review concerning the interpretation of the document was forwarded in November, 1967. The School Committee ignored this request and responded with a Superior Court action for a declaratory judgement that:

(a) it is not permissible under Maine law for the School Committee to have entered into the agreement;

(b) it is not permissible under Maine law for the School Committee to comply with the agreement;

(c) under Maine law the agreement is illegal, ultra vires and of no force and effect;

(d) it is not permissible under Maine law for the School Committee to recognize the Association as the exclusive representative of the certified school personnel of the City of Portland;

(e) under Maine law the School Committee cannot bargain, negotiate or contract away its power, duty and/or responsibility.

In response to this action by the School Committee, the PTA voted overwhelmingly (551 to 44) to ask the MTA and NEA to intervene. On December 7, 1967, the announcement was
made by the Executive Secretary of the MTA that sanctions were once again in effect.

The Portland School Committee countered this move by seeking a temporary injunction from the Superior Court on the sanctions. Meanwhile, the Governor reconvened the 103rd Legislature in a special session on January 9, 1968. Among other bills introduced was one concerning collective bargaining with teachers.

Possibly motivated by anticipated legislation, the resignation of the Superintendent, the approaching deadline for the new school budget, or all of these, both sides declared a truce. The Maine Teachers Association lifted the sanction and the School Committee withdrew its action from the courts. Both sides have agreed to scrap the existing agreement at the close of the current school year and draft a new one.

As mentioned earlier in this section, the bill failed to pass and a new one is being drafted for the 104th Legislature to consider. Whatever the outcome, the judiciary can look forward to a number of requests for interpretation in this new field of activity in education.

While disconcerting to some, it is perhaps literary justice that this study of Maine School Law be concluded on a note of uncertainty. Still another need for future research and updating of the facts is indicated.

Summary

It is illegal to teach in the public schools of Maine
without a valid teaching certificate issued by the State Department of Education. Responsibility for establishing qualifications for certificates has recently been shifted from the Commissioner of Education to the State Board of Education although the Commissioner still retains the right to revoke a certificate under certain conditions.

The employment procedures for hiring teachers are clearly defined and must be strictly adhered to. The superintendent must nominate, the school committee must approve the nomination, after which the superintendent "employs" the teacher under such terms and conditions as he deems proper. Teachers serve at their peril who obtain employment not in keeping with the legal procedures.

An oral contract has been held to be valid. Also, no formal action by a school committee in approving a nomination is necessary, if subsequent action, such as approving pay vouchers, is taken.

A contract cannot be breached simply because no formal action by the school committee or superintendent is taken in assigning a teacher to a particular position. Thus, it has been held that a principal's contract could not be invalidated just because there were no written records of any formal nomination by the superintendent or approval by the school committee. The fact that the principal was allowed to perform his duties and paid for same for a portion of the school year was considered sufficient proof that the school officials
ratified the employment.

Maine teachers serve a probationary period of up to three years before being issued a continuing contract. School committees are under no obligation to renew a contract during this period nor do they have to provide reasons for such action. The question of permanency of employment or "tenure" under the continuing contract has not been adjudicated by the courts. While teachers have the right of a notice at least six months in advance, may request a hearing, and are entitled to reasons for the termination of the contract prior to the hearing, these "reasons" lack definition. Unlike the dismissal statute which stipulates the reasons for which a teacher may be dismissed, the contract statutes are silent on this point. The statutes are also silent on the matter of a teacher terminating a contract. In the absence of specific regulations in the contract itself, a teacher may, presumably, terminate a contract with a written resignation at any time. The number of days of advance notice is not defined.

Maine teachers enjoy the protection of a minimum salary schedule. Unlike some states, the minimum salary for each step from minimum to maximum is set. Private school teaching has been held to count in total years of experience in determining a teacher's salary. Teachers also have an "equal pay" clause for male and female teachers performing similar duties and have a compulsory retirement system.

The field of collective bargaining is new in Maine
although there are several negotiating agreements in effect around the state. The Maine courts have not as yet been called upon to determine the legality of a teacher strike although the Maine Supreme Judicial Court is currently considering the legality of a sanction imposed upon a school district by the Maine Teachers Association. Legislation in this field is anticipated in the near future. The extent to which a school committee may negotiate certain items will probably require judicial interpretation.
CHAPTER X

SUMMARY AND CONCLUSIONS

Introduction

The primary purpose of this study has been to identify, analyze and summarize all existing decisions of the Maine Supreme Judicial Court relating to public school education. In the absence of Supreme Court rulings, or rulings from lower courts on important legal principles, opinions from the office of the Attorney General have been included. So far as the writer can determine, all such opinions, excepting those concerned with strictly local problems have been included. This has been done because Maine school officials have come to place great reliance on these opinions, more so, perhaps, than in neighboring states.

The Maine Supreme Judicial Court cases included in this study cover all pertinent cases from 1821 through 1968. They are more or less evenly divided in number among the major areas of school activity including school districts, finance, property, pupils and teachers. Evidently, there are no glaring deficiencies in the statutes since no one area has received a disproportionate amount of litigation. As was noted in the introductory chapter, early court cases pertaining to statutes now amended or repealed, have not always been included.
A few decisions from Maine Superior Court cases are included. It is extremely difficult to find such cases relating to education. These courts, not being courts of record, have no uniform system of filing cases. In visiting the offices of the Clerk of Courts of three of the Superior Court Districts in Maine, the writer found that court decisions are filed either alphabetically, alphabetically by date, or alphabetically by date by action, either civil or criminal. Since these decisions are not binding upon the Maine Supreme Judicial Court, a compilation of such decisions would not appear to add sufficient weight to the body of the law to justify the monumental task of such an undertaking.

Legal opinions from other jurisdictions have been referred to frequently in this study. While not binding upon the Maine courts, it is hoped that they will provide some insight into what the weight of authority appears to be elsewhere and serve as guidelines in the absence of Maine decisions.

Opinions from the United States Supreme Court have been cited where applicable. Maine, containing a very small number of Negroes, has not had to face the problems of integrating schools so troublesome elsewhere. The writer has not seen the necessity, therefore, of discussing this problem or reviewing the many court cases which have been widely reported elsewhere.

This study has endeavored to provide a systematic arrangement of the ruling legal principles, as established by Maine judicial decisions, for use as an additional tool to
assist those who serve public education in the state. While no substitute for the guidance of the town counsel, city solicitor, or private lawyer, it is hoped that somewhere between the initial decision-making process of the school official or teacher and the necessity of seeking professional legal assistance, that this document may find its appropriate place.

In conducting this study it has been necessary, of course, to examine carefully all existing statutes relating to education in Maine. It is not the writer's prerogative to examine the statutes from the point of view of educational philosophy, or for that matter to question or determine legislative intent. Aristotle is credited with having said that, "to interpret the law is to corrupt it." A recent observer has said, "... The opportunity to rephrase the old law creates in many an irresistible impulse to create a better system with more effective direction and regulation than was provided by the old law." ¹ The conclusions concerning the statutes are presented, therefore, as an attempt to describe the law, not to change it. The conclusions and recommendations to follow are separated into two categories, one on the statutes as they now exist, the other on general observations noted during the study of the court decisions.

The Statutes

The writer has found the language of the statutes generally to be quite clear and without undue rhetorical flourishes or ornamentation. Paragraph construction leaves something to be desired, however. The new 1964 Revision organizes Maine law under thirty-nine titles. Education laws are contained in Title 20. The basic breakdown is by title, part, chapter and section. Many sections are long and involved, covering many subjects in a single paragraph. Section 153 of Chapter 7 is typical of this style. In a single paragraph, covering one and a half pages of single spaced type (597 words), it covers such topics as: the mechanics of joint meetings for school unions; annual meetings; provisions for an office for the superintendent of schools; apportionment of costs; relative amount of service to be performed by the union superintendent in each town; the setting of salary; election of superintendent; discharge of superintendent; provision for appeal by a discharged superintendent; qualifications of the superintendent; and conflict of interest of school committee members.

The layman, who only occasionally peruses the statutes, finds sections like this one extremely difficult to read and interpret. A further breakdown by subsection or numbered paragraph, by topic, would be an improvement.

The 1964 Revision is noteworthy in that, for the first time, the statutes are annotated and include Attorney General
opinions. Also, opportunity for the addition of new statutes is provided by the use of odd-numbered chapters and sections. Wide gaps between section numbers are provided. Thus, Chapter one pertaining to the Department of Education, while containing just three sections, has space for fifty.

The State Department of Education periodically compiles the State of Maine Laws relating to public schools and distributes same in paperback form. While the table of contents is consistent with chapter titles, it is too broad in scope and provides the researcher with little real help in finding a particular subject. One interested in searching the law on duties of school committee members, for example, might turn to Part I (Administration and Organization) but then find that further information is to be found in Chapter 7 (Supervisory Units); Chapter 9 (Administrative Districts); Chapter 11 (Community School Districts); Chapter 13 (District Meetings); Chapter 15 (Superintending School Committee); or possibly Chapter 17 (Union Schools). Then again, he may find his answer in Chapter 101 (General Provisions); Chapter 103 (Duties of Administrative Units); or possibly in Chapter 105 (Attendance and Discipline).

While recognizing that it is fairly uniform procedure in state codes not to use page numbers in the table of contents, the writer believes that the use of page numbers would facilitate the process of looking up the law. A reader seeking Section 911, for example, must thumb through the compilation,
section by section, rather than page by page, until it is found. This is an awkward and time-consuming process which could easily be corrected.

While this publication by the State Department also includes an index, it is not all-inclusive and requires the reader to search several headings for possible information. One interested in the law on truancy, for example, would need to search all of the following index headings to be certain that all pertinent statutes were found: absence; compulsory school attendance age; certificate after absence from illness; compulsory attendance in towns; compulsory education in unorganized territory; discipline; fines for truancy; juvenile offenders; habitual truants; truancy; and truant officers. As with the table of contents, entries in the index are identified by section numbers only.

It is apparent from the foregoing examples that a complete codification of the school laws, annotated, with a comprehensive table of contents and indexing system would be a significant aid to the schoolmen of Maine and others interested in educational legislation. Consideration might also be given to the adoption of a decimal system for easy identification of the statutes, and for a method of keeping the compilation up-to-date with pocket parts.

A final recommendation concerning the statutes is that consideration be given to updating various terms now used to identify school districts and school district officers. While all such terms now in use have legal justification, some
represent a holdover from earlier types of organization; and the duties and responsibilities of these various districts, and their officers, are not always the same. Thus, school districts are labelled in various ways as follows: administrative units, incorporated school districts, community school districts, school administrative districts, school unions and supervisory units. The legislature, possibly concerned by this proliferation of terms, has seen fit to define an administrative unit as, "... all municipal or quasi-municipal corporations responsible for operating public schools."^2

School officers are known as: superintending school committees (as noted earlier, "superintending" has now been removed), community school committees, community school trustees, and school directors. The legal duties and responsibilities of these various boards are essentially the same, yet defined in separate sections of the statutes, and not always identical.

Currently there are four basic governmental units responsible for public education in Maine: the city or town operating an independent school system, two or more towns in a supervisory school union, the community school district, and the school administrative district. All of these units have the same basic responsibilities to the state and to the pupils they serve. Uniformity in the statutes of the duties and responsibilities of the various school units, and their officers, ^2 Maine, Revised Statutes Annotated (1964), c. 501, par. 1.
is suggested.

General Conclusions

The conclusions that follow represent a compilation of carefully considered observations made during the course of this study. They include a variety of topics, so, for the convenience of the reader, are grouped under subheadings which correspond with the chapter titles.

The state and public education. If there has been any one recurring theme throughout this study, it has been that of state supremacy in the field of public school education. It has been pointed out repeatedly that education is a state function, and that school districts are quasi-municipal corporations created by, and responsible to, the state. School district officers, while elected locally, are agents of the state and serve the state.

While the legal concept that education is a state function has been clearly established, the authority of the legislature to delegate such duties and responsibilities as it deems desirable to the local level has been confirmed by the courts on numerous occasions. The concept of local control remains strong in Maine, although in the new school administrative districts local town school committees are being replaced by boards of directors who represent the district member towns and thus, are removing, in part, the administration of school systems by strictly local committees.
While there exists a dual responsibility for education by local districts and a state department of education, no serious conflicts between these two powers has arisen, at least to the extent of reaching the courts. Maine's system of administering the public schools has proven to be satisfactory and no major shift in the balance of power in this area seems likely in the immediate future.

School district organization and control. Maine, as most other states, has set up a system of strong local control, in which the local school district officers have been given almost total control of the care and management of the local schools. Rules and regulations passed by local committees, unless contrary to state statutes, have the force and effect of law in the local district. The legislature, not having the time nor desire to promulgate regulations to cover all local conditions, has enacted a minimum number of laws affecting all school districts in the state. The administration of a local district for the most part is left then, to the local school committee or board of directors. The courts will not review a decision of a local board unless it is illegal, arbitrary or discriminatory.

It was recognized early in Maine's history that a professionally trained school official should be employed to carry out the policies of the local committee. The position of superintendent of schools, the chief school administrator at the local level, has been established and his duties and
responsibilities are clearly established by statute.

While a local employee serving at the discretion of the committee, the superintendent is considered by the courts to be a public officer. The legal status of the Maine school superintendent is not entirely clear and perhaps should be clarified by additional legal definition in the statutes.

School district reorganization. The evolution of school district reorganization in Maine has been gradual. The various types of districts, beginning with the original school district system whereby several districts, with their own school committees, served a single town, to the latest type, the school administrative district serving several towns, have evolved as conditions changed.

Continual refinements in the original Sinclair legislation providing for the formation of school administrative districts have been made to the point that this type of organization is now the most popular in Maine. Additional refinements such as allowing a town to transfer its membership from one school administrative district to another, or allowing two small districts to combine, should be given attention by the legislature. Also, the master plan for redistricting the entire state, defeated at the last session of the legislature, should be given continued study and consideration.

Liability. In Maine, the common law principle of governmental immunity from tort liability for injuries suffered to pupils, or other persons, still applies to school districts and
their officers. While this is also true in a majority of the states, there appears to be a definite trend or pattern developing around the country in which state legislatures and state supreme courts are abolishing the immunity of school districts. This change in judicial point of view has come about largely because of the opportunity for school districts to purchase liability insurance to protect its assets at a minimum cost, yet provide recovery of damages where an injury has been suffered. The Maine Legislature might well consider such legislation in the future. As has been pointed out earlier, the rule of immunity does not extend to their agents or employees, or other persons under contract with such school districts.

The legal status of certain school employees, unpaid volunteers, teacher aides and student teachers is not defined in the statutes. With the doctrine of governmental immunity being increasingly questioned, and in view of the fact that a recent enactment authorizing school committees and directors to pay premiums on liability insurance for employees, it would seem that a clear-cut definition of the legal status of all persons dealing with public school pupils is in order.

School finance. The courts have consistently upheld the authority of the legislature to impose tax programs on a statewide basis for the support of public school education, if uniformly applied, even though local municipalities or school districts may not necessarily receive the same proportionate amount in return. From the very beginning, the legislature
has demanded that local municipalities raise by taxation a minimum amount per pupil for school purposes. These funds are raised by a property tax.

At this time, the state reimburses local districts at a flat rate of 20 percent of the actual per pupil expenditure. School administrative districts receive an additional 10 percent bonus. The subsidy formula does not allow for differentials based on local effort or ability to finance education. In other words, the richer school districts may spend more money for a quality program and receive the same percentage from the state as the poorer districts. It allows the wealthier districts to provide better educational opportunities with less local effort. This formula should be revised to provide more equitable opportunities for education in all districts, regardless of local property valuation.

It is noted that the fiscal year for school districts is the same as the calendar year, whereas the state and federal governments operate on a July 1 to June 30 basis. This necessitates double records and constant confusion over the actual cost of budgetary items since they are prorated over two fiscal years. All parties concerned would benefit from a statutory revision defining the fiscal year for municipalities and/or school districts to be the same as for the state and federal governments.

The courts have upheld the right of school districts to receive gifts and bequests. A trust fund set up to benefit
the pupils of a particular school is not invalid should this school subsequently combine with another school as long as the pupils for whom the original bequest was made continue to attend the consolidated school.

While school committees or school directors have the responsibility of compiling the annual school budget, the final responsibility for approving the budget rests with the voters of the district, or, in the case of cities, with the city council. Once approved, the funds may generally be expended by the school committee in any manner deemed best for the total operation of the schools.

The courts have consistently upheld the right of school districts to incur indebtedness for school construction purposes. The current debt limit is 12-1/2 percent of the local valuation. In school administrative districts it is 12-1/2 percent of the combined valuation of all member towns. It has been further held that the indebtedness of a school district is not the indebtedness of the town or towns included, since a school district is a quasi-municipal corporation.

Maine is one of the very few states which has no constitutional provisions prohibiting the use of tax moneys for sectarian purposes. There is statutory authority to transport private school pupils at public expense but the state does not include this expenditure in its formula for reimbursement.

An unusual situation exists in Maine wherein some school districts contract with sectarian schools for the purpose of
providing secondary education. While not as yet challenged, this might well be considered a church-state conflict if re-viewed by the courts. They may be called upon to rule whether this practice is contrary to the First Amendment.

School property. Although school committees and directors are responsible for the management, custody and care of the schools, the school property itself, is owned by the state. The legislature may control or dispose of such property, with or without the consent of the district or its inhabitants. School officials have the authority to take land by eminent domain procedures if necessary for the location of a school.

While it is common practice to permit community use of school buildings for a wide range of activities, a series of Attorneys General opinions have consistently held that it is illegal to permit the use of school buildings by any religious group.

Pupils. The legislature has enacted a number of statutes pertaining to pupils on a statewide basis. Attendance is compulsory for all pupils between the ages of seven and seventeen. Children may be excluded from school on the basis of physical or mental unfitness although the extent of the handicap for exclusion has not been defined. More definitive legislation is needed in this area.

The local school committee has the right to make reasonable rules and regulations concerning pupil behavior. This includes the authority to enact regulations concerning dress
and appearance. Pupils may be temporarily suspended from school for disorderly conduct or they may be permanently excluded by formal action of the school committee. The permanency of the expulsion has never been defined and, in fact, pupils must be readmitted upon repentance, after a reasonable length of time, although the length of time is not defined in the statutes. Expulsion is legal only after an investigation and a hearing. Corporal punishment is legal if deemed necessary by the teacher in charge and not excessive.

Pupils must attend school in the district where their father or legal guardian maintains his residence except that pupils may attend schools outside their district, at public expense, if the local district does not maintain a school.

Local committees may prescribe which subjects shall be taught as well as the textbooks to be used so long as they are not contrary to state-prescribed requirements. The secular study of the Bible may be included.

Transportation must be provided to all elementary pupils who live at a "reasonable" distance from the school they attend. This distance has never been defined by the legislature and should be in the future. Transportation must be provided to all pupils in a school administrative district regardless of grade level.

Legal definitions of the classification of pupils are confusing in the Maine laws. The most recent enactment defines a high school as a school containing grades nine to twelve; a
junior high school as one containing any combination of two or more consecutive grades from six to nine; and an elementary school to include that part of the school organization in which is offered a program of studies preceding that offered by an approved secondary school.

For purposes of certification of teachers, on the other hand, elementary is defined as sub-primary through grade nine; junior high is six through 9; and secondary is seven through twelve. Throughout the statutes reference is made to high school, secondary, junior high school, academy and elementary school without any uniform definition as to which grades are included. While the writer recognizes that there is disagreement among educators on this subject, the plea here is for consistency within the state and within the statutes, for purposes of state subsidies, accreditation, certification and general understanding by Maine school people.

Teachers. The courts have held repeatedly that it is illegal to teach in the public schools of Maine without a valid teaching certificate, be it a temporary permit or a permanent license. The responsibility for procuring such certification rests with the employee not the employer. Maine's certification laws are more stringent than those in neighboring states. In view of the ever-present shortage of teachers in Maine, a review of the current regulations is indicated, not for the purpose of lowering standards but for providing more flexibility.
The employment procedures for hiring teachers are well defined and must be strictly adhered to. The question of permanency of employment or tenure under the continuing contract has not been adjudicated by the courts. While teachers have the right of a notice and may request reasons for the termination of a continuing contract, these reasons lack definition. Also, under the dismissal statutes, the two reasons for dismissal, "unfitness to teach," and "services deemed unprofitable to the school" have never been defined despite several court decisions in this area. In view of the increasing militancy among teachers and the active intervention of state and national teacher organizations, the legislature might clarify the statutes on contracts and dismissal with more specific language.

Collective bargaining for teachers has arrived in Maine. There are several negotiation agreements in effect within the state. Controversies have arisen and sanctions have been imposed. Two such sanctions are currently being challenged in the courts by school committees. The extent to which a school committee may negotiate needs judicial interpretation. This area probably represents the most urgent need for legislative action in the field of education. Several states have already taken action and others are in the process. This is an area that the legislature can ill afford to ignore.
Need for Further Research

The need for continuing research and study in the area of school law is self-evident. The law, or some aspect of it, changes every time a court decision is rendered; whenever the legislature convenes; or when a local school committee, or the State Board of Education, as branches of the state government, adopt new policies or regulations. Interpretations of the law are constantly being made. Indeed, as this study is being concluded, judicial decisions in Maine concerning teacher dismissal, tenure rights, corporal punishment and collective bargaining rights are pending.

It has been the intent of this study to compile and interpret judicial decisions, as they affect education, from the date of Maine's entry into the Union of States to the present time to fill a void which has heretofore existed. A foundation has been established upon which future researchers may build.

This study has been confined to public school education. Research is needed in the private school area. The legal status of the private school and the quasi-private academies should be more clearly defined. The legality of payment by a town of tuition funds to private and/or parochial schools for the secondary schooling of its pupils may well raise the question of public support of private schools. The privately owned and operated academies have occupied a unique place in the Maine public school system. The new Sinclair Act permits them to
become part of a school administrative district, yet retain their identity and status as a private school. There is a need in this area for research.

The subject of school district reorganization also needs further study. Maine is a very large state in area but with a relatively small population which is concentrated in the southwestern part of the state. The Master Plan for Reorganization needs refinement in order that small school districts now in operation may join with other districts. Provision should also be made for the transfer of towns from one district to another. A uniform method of financing is also needed. Currently there are over fifty Maine communities not operating any schools at all. They "buy" their schooling from other districts. The foregoing suggests the need for a thorough study of Maine school district reorganization.

Finally, research is needed in the field of higher education in Maine. Historically, the teacher training institutions have been under the jurisdiction of the Commissioner of Education and the State Board of Education. The legislature has been content to delegate its authority in this area and as a result, statutes pertaining to higher education are almost nonexistent. The "law" so far as teacher training institutions are concerned is that which has been incorporated into the minutes of the State Board meetings by way of rules and regulations or policy statements.

The University of Maine, on the other hand, which is
in effect, a quasi-private institution, has received considerable attention from the legislature over the years. A major change has just recently taken place. The special session of the 103rd Legislature (January, 1968) enacted legislation which has effected a merger of the University of Maine and the five State Colleges into one system under the direction of a Chancellor and a new Board of Trustees entirely separate from the State Board of Education. The legal problems of this merger are challenging but not beyond solution. Salary status of faculty, tenure rights, administrative responsibilities, programs at the various campuses, and a multitude of other problems require a speedy solution. A study of the past functions of the various institutions included in this merger, along with recommendations for their future direction would represent a distinct contribution to the state.
APPENDIX A

OPINION OF THE JUSTICES
OF THE SUPREME JUDICIAL COURT
GIVEN UNDER THE PROVISIONS OF SECTION 3
OF ARTICLE VI OF THE CONSTITUTION
QUESTIONS PROPOUNDED BY THE SENATE
IN AN ORDER DATED JANUARY 13, 1958
ANSWERED JANUARY 14, 1958

SENATE ORDER PROPOUNDING QUESTIONS
ANSWER OF THE JUSTICES

To the Honorable Senate of the State of Maine:

In compliance with the provisions of Section 3 of Article VI of the Constitution of Maine, we, the undersigned Justices of the Supreme Judicial Court, have the honor to submit the following answers to the questions propounded on January 13, 1958.

QUESTION (I): Do any of the provisions of Sections 1 and 2 of Legislative Document 1637 (An Act Relating to Educational Aid and to Clarify the Procedure of Reorganization of School Administrative Units) delegate legislative power to the State Board of Education and the School District Commission in violation of Section 1 of Part First of Article IV of the Constitution of Maine?

ANSWER: We answer in the negative.

The problem raised here is whether or not the Legislature has established adequate criteria which will control the exercise of a sound discretion by the State Board of
Education or School District Commissions. We are satisfied that these sections of the proposed Act furnish such standards. We note no instance in which powers which can be properly exercised only by the Legislature have been improperly delegated to any subordinate agency.

QUESTION (II): Must every city or town that is a participating municipality in a school administrative district, consisting of two or more municipalities to be created under the provisions of Section 2 of Legislative Document 1637, take into account its proportionate part of the indebtedness incurred by such district in computing the extent of its ability to create debt or liability under the provisions of amended Section 15 of Article IX of the Constitution of Maine?

ANSWER: We answer in the negative.

A School Administrative District organized under the proposed Act, is a "body politic and corporate" (Sec. 111-F), is separate and distinct from the municipalities participating in its creation. It is a quasi-municipal corporation of the familiar pattern of school, water, recreational, and sewerage districts. The indebtedness of School Administrative Districts thus is not the indebtedness of such municipalities. *Kelley v. School District*, 134 Me. 414; *Hamilton v. Portland Pier Dist.*, 120 Me. 15; *Kennebec Water Dist. v. Waterville*, 96 Me. 234.

QUESTION (III): Would a school administrative district, consisting of two or more municipalities to be created under
the provisions of Section 2 of Legislative Document 1637, be subject in any manner to the provisions of amended Section 15 of Article IX of the Constitution of Maine limiting the amount of debt or liability that may be incurred by cities and towns?

ANSWER: We answer in the negative.

The Constitution reads in part, "No city or town shall hereafter create any debt or liability, which . . . shall exceed . . ." The limitation on municipal indebtedness applies to cities and towns and not to other entities, or, as here, a School Administrative District. Our Court has so held in the cases cited in our answer to QUESTION (II).

QUESTION (IV): Do the provisions of Section 2 of the Legislative Document 1637 which allow two or more municipalities to join together to form a new municipality known as a School Administrative District, which district after its formation owns, operates, and controls all the public schools within the district, violate any of the provisions of Article VIII of the Constitution of Maine?

ANSWER: We answer in the negative.

The issue arises from the words in Article VIII of the Constitution, "A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people; to promote this important object, the legislature are authorized, and it shall be their duty to
require, the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools; . . ."

In Sawyer v. Gilmore, 109 Me. 169, at p. 184, involving the constitutionality of the levy of a tax for the support of schools, our Court said with respect to Article VIII:

"Who is to determine what is suitable? Clearly the Legislature itself. 'Suitable' is an elastic and varying term, dependent upon the necessities of changing times. What the legislature might deem to be suitable and therefore necessary under some conditions, they might deem unnecessary under others."

In 1876, in an Opinion of the Justices, 68 Me. 582, approving the constitutionality not of a particular bill but in general of a school mill tax, the suitable provision Article was referred to, and the Justices pointed out that the Legislature could do more. In brief, the Constitution marks the mandatory duty of the Legislature, but is not a prohibition upon its powers.

Municipalities providing for their public school system by the medium of School Administrative Districts will nevertheless thereby be making suitable provision for the support and maintenance of public schools, and by their proportional contributions to the expense incurred by such Districts will be in compliance with both the letter and spirit of the Constitution. The Legislature, by making provision therefore, will have satisfied the mandatory constitutional requirements imposed upon it.
QUESTION (V): Do any of the prohibitions against the passage of emergency legislation found in Section 16 of Part Third of Article IV of the Constitution of Maine, prevent the passage of Legislative Document 1637 as an emergency measure to become effective upon approval by the Governor?

ANSWER: We answer in the negative.

The Constitution reads, in part:

"An emergency bill shall include only such measures as are immediately necessary for the preservation of the public peace, health, or safety; and shall not include (1) an infringement of the right of home rule for municipalities, (2) a franchise or a license to a corporation or an individual to extend longer than one year, or (3) provision for the sale or purchase or renting for more than five years of real estate."

The preamble to the Act sets forth that, "... it is essential that safe and adequate facilities for such administrative units be constructed without further delay." Evidence of such facts would constitute a matter of public safety as a matter of law. Whether the facts so stated exist is for the Legislature, not for us to determine. Morris v. Goss, 147 Me. 89, 94. As for home rule, municipal plebiscites fulfill such requirements. The creation of a body politic and corporate is not the granting of a franchise or license within the meaning of the constitutional prohibition. The proposed Act contains no grant of any franchise or license but does no more than to provide mechanics by means of which municipalities may initiate voluntary action to form School Administrative Districts. Nor does the Act by its terms produce or compel a sale, purchase or renting of real
estate within the intendment of the Constitution.

QUESTION (VI): Does Section 111-L of Legislative Document 1637 which provides for the financing of the operations of any School Administrative District to be created under this act violate Section 8 of Article IX of the Constitution of Maine?

ANSWER: We answer in the negative.

The Constitution reads, in part:

"All taxes upon real and personal estate, assessed by authority of this state, shall be apportioned and assessed equally, according to the just value thereof;"

The Act proposed observes the requirements of the Constitution for equal taxation by adopting the state valuation. Sawyer v. Gilmore, 109 Me. 169, 188.

Dated at Augusta, Maine, this 14th day of January, 1958.

Respectfully submitted:
S/ Robert B. Williamson
S/ Donald W. Webber
S/ Albert Beliveau
S/ Walter M. Tapley, Jr.
S/ Francis W. Sullivan
S/ F. Harold Dubord
APPENDIX B

POLICY STATEMENT ON THE LIABILITY OF SCHOOL OFFICIALS
Your question on the liability of school officials for injuries incurred by pupils in extra-curricular activities has been given further consideration. As you know, this is a rather complicated legal question and must be considered in the light of existing statutes, court opinions and commonly accepted law.

Fundamentally, the support, operation and control of schools is in the legislature. The superintending school committee members and school directors are public officers, obtaining their authority from the statutes whereby the legislature has delegated to municipalities and districts the support and conduct of public schools under legislative standards. As public officers, the superintending school committees and directors exercise administrative and certain quasi-judicial functions. It follows, therefore, that the same rules of law apply to committee members and directors as apply to other public officers.

As for liability of public officers, the state may not be sued without its consent, and it is generally held that, in the absence of a statute, political subdivisions and governmental agencies may not be sued. There is a specific provision that a municipality may be sued for injuries resulting from defects in public ways, but there is no corresponding statute relating to injuries in connection with school activities. In the absence of such a statute, there would not appear to be any right to sue a governmental agency such as a school committee or Board of Directors.

While public officers may be held individually liable in a civil action for what is called ministerial acts, they are not usually responsible for acts which are discretionary in character and the discretion is exercised honestly and in good faith. Now the question may be raised as to whether a committee member or director is responsible for the acts of his agents, i.e., teachers. The opinions I have read seem to indicate that they do not have to answer for either acts of omission or commission on the part of agents.

There may be a question as to whether a superintendent is a public officer or not. There has never been a case in point but attorney generals' opinions indicate that he is a public officer, due to the public nature of schools, his official relationship with the school committee or directors, and the definition of his duties by statute.

In some states committee members and other public officers may be held responsible for injuries, but Maine law does not appear to have this force.
In summary, it would appear that school committee members, directors and superintendents are considered to be public officers, and as long as they are acting in an administrative capacity, would not be responsible for injuries to pupils, but that teachers acting in what is called a ministerial capacity might be held liable for acts of omission or commission.
APPENDIX C

CITY OF AUBURN et als.

vs

JOHN B. ANNETT et als.
Rulings and Order for Judgment.

The City of Auburn and the members of its City Council in the role of plaintiffs and the individuals composing the Superintending School Committee as defendants by declaratory judgment process submit their request that this Court adjudge whether with the City Council or with the Superintending School Committee is invested the authority to fix the total maximum expenditure of the Department of Education of the City of Auburn for purposes of the annual budget. It is clear that an authoritative court judgment in this proceeding will terminate an uncertainty and controversy within the purview and purpose of M. R. S. A. T: 14 #5958.

Resolution of this conflict will be afforded by means of an ascertainment of the legislative will clearly and unmistakably expressed by the law-making power in the Charter of Auburn, P. & S. L., 1917, s. 201, as amended, Frankfort v. Lumber Co., 128 Me. 1, 4, and in the public statutes "in all respects not modified by the city charter." Lunn v. Auburn, 110 Me. 241, 243.

"Towns (cities) are created by the statute -- -- -- Thus
created it becomes an institution of the State, estab-
lished for certain public purposes, and for effecting
those purposes, it is invested with certain corporate
powers, and is charged with corresponding duties - all
either expressly or impliedly provided for in the sta-
tutes, and adapted to their peculiar nature."
Westbrook v. Deering, 63 Me. 231, 235, 236.

See, also Concord v. Delaney, 58 Me. 309, 315.

Municipalities must be required by the Legislature to
make suitable provisions at their own expense, for the support
and maintenance of public schools. Constitution of Maine,
Art. VIII. See M. R. S. A., c. 103, T: 20, #851 et seq.

The inhabitants of the City of Auburn are a corpora-
tion. Charter, Art. 1. The plenitude of corporate powers
granted by the Legislature to the City by the Charter and by
State laws is vested in the City Council:

"except as otherwise provided by this charter -- -- --
"except that the general management, care and conduct of
the schools shall be vested in a school committee."

Examination of the Charter will dispense with all
occasion for further attention to the first exception above.

By logical reduction then the School Committee is the
one arbiter of public school appropriations or the City Council
is the ultimate appropriating agency and the School Committee
must exercise its general management, care and conduct of the
public schools within the limits of the total public school
appropriation by the City Council.

The mayor is ex officio a member of the School Committee
which consists of the Mayor and 10 other members chosen, 2 from
The Charter defines the powers and duties of the School Committee as follows:

"The superintending school committee shall have all the powers, and shall perform all duties in regard to the care and management of the public schools of this City which are now conferred and imposed upon the superintending school committee by the laws of this State, except as otherwise provided in this charter." Charter, Art. IV, sec. 3.

Logomachy as to the terms "management, care and conduct" is inconclusive. Apart from financial powers and duties much latitude remains for the management, care and conduct of public schools by the School Committee in the most important educational aspects. But there can be no denying that for a completely comprehensive management, care and control of public schools with full autonomy control of finances is required. The legislative intent as to the meaning of the language, "management, care and conduct" is the decisive criterion and the entire Charter and the public statutes must be examined to discover the legislative intention as such has been expressed.

"A doubtful corporate power, it has been said does not exist; and when any power is granted, and the mode of its existence is prescribed, that mode must be strictly pursued." Frankfort v. Lumber Co., 128 Me. 1, 4.

Article VII of the Charter legislates concerning "Business and Financial Problems" of the City. Section 1 imposes a close and constant recordation of the financial transactions and of the financial status of all departments of the municipality and a monthly report of such data by the City Auditor to the Manager prior to Council meetings.
Section 3 requires that monthly financial statements be published by the Auditor. Each of the municipal "boards" must annually on a date fixed by the Council render to the Manager a report of the yearly transactions of that board. Based upon such returns the Manager prepares and publishes his annual report which details receipts, expenditures, balance sheets and such other financial information as may be required by the Council. At the municipal year's end, the Manager "submits" to the Council budget "estimates" for the ensuing fiscal year. Such budget is compiled from detailed information supplied by the municipal boards on blanks devised by the Manager. The budget must contain an exact statement of the City's financial condition and an itemized list of appropriations "recommended" for current expenses and permanent improvement together with comparative statements of expenditures for the current and for the previous year. The budget must present an itemized statement of estimated revenue from all sources other than taxation, a statement of taxes required with comparative figures from the current and from the previous year and any other information required by the Council.

The budget "estimates" of the Manager must be published within 2 weeks after their submission to the Council. The Council must fix a time and place for a public hearing on that budget and give the public notice of such hearing to be held at least 10 days before passage by the Council of the appropriate resolve.
Within a month after the new fiscal year begins, the Council must pass an annual appropriation resolve based on the budget submitted by the Manager. The resolve must be itemized for each department in at least 5 respects, Salaries and Wages; Other Services; Supplies and Materials; Fixed Charges; Capital Outlay.

The total amount appropriated shall not exceed the estimated revenue of the City.

Should the Council take no final action to prepare within the time set the annual appropriation resolve by a sort of default the budget as submitted by the Manager is deemed to have been finally adopted by the Council.

All moneys appropriated but not spent or owed must at the municipal's year end be transferred to a reserve fund except balances in the school fund. Unexpended school balances by State law must be carried forward and credited to school resources for the ensuing year. M. R. S. A., T: 20, #3453.

The borrowing of money for the City and that to a degree limited in form and purpose is entrusted to the Council. Bonds of the City for the acquisition of land, the construction and equipment of buildings, the paving of roads and other public improvements under stated restrictions may be issued upon a 4/5ths' vote of the Council after public notice. Every order for the issue of bonds or notes must provide for an annual tax levy to meet annual principal maturities and interest.
Money shall be paid out only upon warrants on the city treasury, issued by the Auditor and countersigned by the Manager.

Save for procedural rules in Article II, #7, Article VII contains all the budgetary and appropriative prescriptions. The approach toward appropriate funds is to the City Council through the Manager. The School Committee is one of the "boards." The Manager submits to the Council budget estimates from data gleaned from the boards and from other sources.

The foregoing paraphrase renders it eminently apparent that after the informed estimates and the recommendations of the Manager but by the City Council - and then only subsequent to a notified public hearing - are school funds from the City fixed in amount and authorized. The total amount appropriated for all purposes by the Council must not exceed the estimated revenue of the City. The faculties for taxing, borrowing, and appropriating are reposed in the City Council. Only one budget is conceived and that is for resolution and decision by the Council. No finality for school budget fixation is extended to the School Committee by any provision of the Charter. School estimates and recommendations are not treated as unique or distinctive. A public hearing upon an assembled municipal budget would not be purposeful if such budget were peremptory. It is general information that school estimates are the major element of most budgets. The
conclusion must follow that the City Council are entrusted by the Charter with a dutiful, prudential, sound and responsible discretion in the exercise of ultimate budgetary judgments.

In 1917 when the Auburn City Charter was granted the public laws of Maine provided:

"The management of the schools and the custody and care, including repairs and insurance on school buildings, of all school property in every town, shall devolve upon the superintending school committee - - " R. S., 1916, c. 16, #37. (emphasis added)

The charter of 1917 afforded no powers of budgetary fixation for the School Committee. In 1917 municipal school committees had no such powers under the public laws of this State. R. S., 1916, c. 16.

The Legislature has for many years imposed by statute an express and unrevised minimum of 80¢ per inhabitant of income from corporate school funds, grants from the State, donations, devises, bequests, and forfeitures to be raised and expended annually by every municipal corporation for the support of its public schools. R. S., 1916, c. 16, #16; M. R. S. A., T. 20: #851.

As for school physicians, their duties and services in municipalities having a population of less than 40,000, the expenditure must not exceed the amount appropriated by the municipal government. M. R. S. A., T. 20: #1131 through 1139. See also R. S., 1916, c. 16, #40 through 47.

In School Administrative Districts the Legislature has
given to the directors the duty and power of preparing the school budget but that budget must be approved by the voters of the district at a district budget meeting as to items dealing with the expenses necessary to operate the School Administrative District, appropriations for the reserve fund and capital outlay appropriation. M. R. S. A., T. 20: #305.

In Community School Districts the trustees and not the school committee set the budget. M. R. S. A., T. 20: #355.

In Maine there has existed for many years a provision as to liability for municipal, unpaid debts:

"The personal property of the residents and the real estate within the boundaries of a municipality, village corporation or other quasi-municipal corporation may be taken to pay any debt due from the body corporate. The owner of property so taken may recover from the municipality or quasi-municipal corporation under Title 14, section 4953."

M. R. S. A., T. 30: #5053.
See R. S., 1916, c. 51, #105, c. 89, #30, 32;
M. R. S. A., T. 14: #4951, 4953.
P. L. 1833, Chap. DLXXXVI. sec. 3.
Eames v. Savage, (1885), 77 Me. 212, 216, 218.
Littlefield v. Greenfield, 69 Me. 86, 89.
Caldwell v. Blake, 69 Me. 458, 467.

The City Charter concentrates fiscal responsibility and authority in the City Council. The borrowing power is strictly and definitively limited. Art. VII, #7, 8, 9. The total amount appropriated shall not exceed the estimated City revenue. The budget must present an itemized statement of all sources of revenue; a statement of taxes is required, with comparative figures, etc. The budget is subject to public hearing. The Legislature in 1917 was manifestly
intent upon commissioning the City Council with a stewardship to be exercised over municipal finances under exacting rules particularly so as to municipal debt making and debts.

The Constitution of Maine fixes a municipal debt maximum. Article IX, #15.

As to the correlation of the Charter of 1917 (see Art. 4, sec. 3) and the statutes this Court said in Bass v. Bangor, 111 Me. 390, 394 (1914):

"It must be regarded as settled law, that charters or parts of charters, of cities are not repealed by a general law if the two can consistently stand together, unless the intention of the Legislature to repeal the charter or parts of charter is clear and plain — — —"

The general laws of this State direct superintending school committees upon the nomination of school superintendents to regulate the salaries and qualifications of teachers. The committees shall direct the general instruction, may add some optional courses of instruction, shall determine the purchase of text books, shall hire truant officers and fix their compensation, may grant leaves of absence with half pay to certain personnel and shall care for school property, repairs and insurance upon the buildings. M. R. S. A., T. 20: #102 (7) 161 (5), 473 (1) (2) (9), 856, 913.

As to the statutory duty to effectuate certain educational purposes and the independent discretion granted therefor to the School Committee a construction of the Charter and the general statutes involved, however, indicate that it was the will of the law making Legislature that estimates for
appropriations submitted on behalf of the School Committee may be reduced whenever such estimates in the sound judgment of the City Council exceed an amount reasonably necessary for the accomplishment of their purpose in consideration of the educational needs of the City, the City's financial condition or means and the expenditures the City must make.

As the Connecticut Court said in Board of Education v. Board of Finance, 127 Conn. 345, 352, 16 A. 2d 601, 605:

"It is probably true that in many instances a board of finance does not have as sound an understanding of the educational needs of a town as does the board of education and that therefore a decision by the former to reduce an estimate submitted by the latter may not in fact conduce to the best possible educational interests of the people of the town; but, on the other hand, it is more than possible that a board of education, less familiar with the finances of the town or perhaps with financial matters in general, if left without a check, might incur expenditures which are not reasonably necessary to serve these interests and the expenses of which the town could ill afford to meet. One purpose of the legislature in establishing town boards of finance is - - - - to afford a check against the incurring of such expenses on the part of the town. It is also true that where a board of finance reduces an estimate of a board of education so that the sum appropriated is less than is reasonably necessary to carry out the purpose to be served, or where it takes such action not in the exercise of a sound judgment but from improper motives or without sufficient understanding, there would seem to be no adequate remedy which the board of education might effectively invoke. The legislature, however, evidently deemed it necessary in the interests of sound municipal finance to give to town boards of finance the powers we have outlined. If such boards do not exercise their judgment intelligently, fairly, and disinterestedly, the situation is one, unfortunately not unknown, wherein a public official fails to properly perform the duties of his office, and the remedy is that inherent in the theory of representative government, to replace him by another. If the result brought about by the statutes, which are evidently designed to produce a nice balancing of powers between the two boards, do not serve the public interests, there course is not, where no justifiable
rights are involved, to seek to make the court arbiters in a controversy essentially political, but to ask the legislature to change or better define the respective powers of the board."

The Clerk shall enter the declaratory judgment that the Auburn City Council has the final authority to fix the total maximum expenditures of the Auburn Superintending School Committee for the purposes of the annual municipal budget.

Dated April 29, A. D. 1965.

/s/ FRANCIS W. SULLIVAN
Justice, Supreme Judicial Court
APPENDIX D

USE OF THE BIBLE IN MAINE PUBLIC SCHOOLS
USE OF THE BIBLE IN MAINE PUBLIC SCHOOLS

A Policy Statement of the State Board of Education

The 1963 decision of the United States Supreme Court in the cases of Murray v. Curlett and Abington Township v. Schempp has aroused considerable concern in the minds of many of our citizens and educators relating to the proper use of the Bible in school curricula. Statements on this topic have been issued by the State Attorney-General, the Commissioner of Education and the State Curriculum Committee. It is evident that some further amplification and possible clarification is needed. With this purpose in mind, the following statement has been prepared to serve as a guide for the use of school officials and teachers.

In the opinion the Court has stated: "It might well be said that one's education is not complete without a study of comparative religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing that we have said here indicates that such study of the Bible or of religion, when presented objectively as a part of a secular program of education, may not be effected consistent with the First Amendment."
Attorney-General Hancock has pointed out that religious exercises as such are unconstitutional but that "the decision does not prohibit the secular study of the Bible or of those subjects in which the history of religion may be an integral part." He has further advised that the decision does not prohibit the study of recitation in our schools of documents and books containing references to God.

The Board is in accord with the statements relating to moral principles which were enunciated in the report of the State Curriculum Committee. It is agreed that schools have a right and an obligation to teach those moral principles on which our government and society are founded. It believes it is a function of education to mold the moral strength of pupils so that they will understand and respect such fundamental principles as sobriety, industry, frugality, chastity, truth, justice and the Golden Rule.

The Board recognizes that our nation was founded on the principle of separation of Church and State; that religion as Jefferson wrote "is a matter between every man and his Maker, in which no other, and far less the public, had a right to inter-meddle;" and that because of the diversity of American beliefs, it is not the function of the school to provide a program of sectarian religious instruction. This function is reserved to the church and the home.

In the light of the Court's decision and the Attorney-General's statement, however, it seems clearly evident that
the study of the Bible or of religion is a proper part of a program of secular education because knowledge thereof is essential and desirable to an understanding of subject matter. The Bible, therefore, is not excluded from school use, and it is permissible to teach about the Holy Scriptures and different religions. Accordingly, the Bible may be used as a valuable source of material in both literature and history.

The Bible is a library of books closely associated in thought, philosophy and purpose. It has had an influence upon mankind in all realms of human activity, moral, aesthetic and practical. Its study will give pupils a richer background by providing a better understanding of this great collection of literature. In anthologies or any collections of literary masterpieces, portions of the Old and New Testaments are frequently included for study. Pupils should have this background to understand Biblical references in other great literary works.

The Bible not only contains examples of great literary value, but it has served as an inspiration for great music and painting. For example, Handel's "Messiah," Michaelangelo's "Moses," and DaVinci's "Last Supper." Through an understanding of the Bible a pupil can increase his ability to appreciate the best in these fields. Justice Jackson emphasized the importance of such understandings when he wrote: "Music without sacred music, architecture minus the cathedral or painting without the scriptural themes would be eccentric and incomplete,
even from a secular point of view, yet the inspirational appeal in these guises is often stronger than a forthright sermon. Certainly a course in English literature that omitted the Bible and other powerful uses of our Mother tongue for religious ends would be pretty barren. And, I should suppose it is proper, if not an indispensable part of preparation for a worldly life, to know the roles that religion and religions have played in the story of mankind. The fact is that, for good or ill, nearly everything in our culture worth transmitting, everything which gives meaning to life, is saturated with religious influences. One can hardly respect a system of education that would leave the student wholly ignorant of the currents of religious thought that move the world society for a part in which he is being prepared."

It must be recognized, however, that there is a distinction between teaching about religion, with all the necessary involvements thereto, and a narrowly religious denominationalism. The line of demarcation may not be clearly defined but the teacher and school committee have a high degree of latitude and must exercise the discretion vested in them in each instance. Some factors worthy of consideration in proper use of the Bible would be the extent to which its use is connected with the course of study, the extent to which the exposition is recognized as the teacher's own opinion with due allowances for others who hold different views, and whether or not pupils are of a maturity to understand
the implications. Where the line is to be drawn between the proper and the improper cannot be stated explicitly. Teachers and school officials have discretionary powers in this respect and should use them wisely.

The premise that a school has a role in building spiritual values is embodied in a resolution of the American Association of School Administrators, adopted in 1964, which states that: "The public schools should play an important part in building spiritual values and Association members should take the lead in developing educational programs that recognize the contributions of religion in the history and development of this Nation and that encourage a deep and genuine respect for religious freedom. To do this the school is urged to cooperate with the home, the church and other community organizations."

In summary, the decision of the Supreme Court in the Schempp and Murray cases does not alter the schools' responsibility for proper use of the Bible in the public schools. It is a proper part of secular education. School officials are free to continue use of the Bible as a source book and to utilize it as an integral part of appropriate courses.

Adopted: May 22, 1964
APPENDIX E

AN ACT PROVIDING FOR THE ELECTION OF REPRESENTATIVE BARGAINING AGENTS WITH POLITICAL SUBDIVISIONS OF THE COMMONWEALTH
THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Sixty-five

AN ACT PROVIDING FOR THE ELECTION OF REPRESENTATIVE BARGAINING AGENTS WITH POLITICAL SUBDIVISIONS OF THE COMMONWEALTH

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section four C of chapter forty of the General Laws is hereby repealed.

SECTION 2. Chapter 149 of the General Laws is hereby amended by inserting after section 178F the following eight sections: --

Section 178G. When used in this section and in sections one hundred and seventy-eight H to one hundred and seventy-eight N, inclusive, the following words shall, unless the context requires otherwise, have the following meanings: --

"Municipal employer," any county, city, town, or district, and any person designated by the municipal employer to act in its interest in dealing with municipal employees.

"Employee," any employee of a municipal employer, whether or not in the classified service of the municipal employer, except elected officials, board and commission members, police, and the executive officers of any municipal employer.

"Employee organization," any lawful association, organization, federation or council having as a primary purpose the improvement of wages, hours and other conditions of employment.

"Professional employee," any employee engaged in work which is predominantly intellectual and varied in character as opposed to routine mental, manual mechanical or physical work, which involves the consistent exercise of discretion and judgment in its performance, of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period, and which requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher
learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes.

Section 178H. (1) Employees shall have, and be protected in the exercise of, the right to self-organization, to form, join or assist any employee organization, to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from actual interference, restraint or coercion; provided, however, that an employee organization recognized by a municipal employer or designated as the representative of the majority of the employees in an appropriate unit, shall be the exclusive bargaining agent for all employees of such unit, and shall act, negotiate agreements and bargain collectively for all employees in the unit, and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

(2) Whenever, in accordance with such regulations as may be prescribed by the state labor relations commission, a petition is filed with said commission by municipal employer alleging that one or more employee organizations have presented a claim to be recognized as the representative of a majority of employees in a specified unit, or by an employee or group of employees or an employee organization alleging that a substantial number of employees wish to be represented for collective bargaining by an employee organization as exclusive representative, or that the employee organization currently certified or recognized by the municipal employer as the bargaining representative does not currently represent a majority of the employees in the unit, said commission shall investigate such petition and, if it has reasonable cause to believe that a question of representation exists, shall provide for an appropriate hearing upon due notice.

(3) If, after hearing, the commission finds that there is a controversy concerning the representation of employees, it shall direct an election by secret ballot or shall use any other suitable method to determine whether and by which employee organization the employees desire to be represented and shall certify the results thereof. No election shall be directed in any bargaining unit or any subdivision thereof within which in the preceding twelve-month period a valid election has been held. No election shall be directed during the term of a collective bargaining agreement; except that for good cause shown the commission may direct such an election. An employee organization which receives a majority of votes cast in an election shall be designated by the commission as exclusive
representative of the employees in the unit. In any election where none of the choices on the ballot receives a majority, a run off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and the second largest number of valid votes cast in the election.

(4) The commission shall decide in each case whether the appropriate unit for purposes of collective bargaining shall be the municipal employer unit or any other unit thereof; provided, uniformed employees of the fire department shall be in a separate unit and provided, further, that no unit shall include both professional and non-professional employees unless a majority of such professional employees vote for inclusion in such unit.

Section 1781. The municipal employer and the employee organization recognized or designated as exclusive representative of employees in an appropriate unit shall have the duty to bargain collectively. In such bargaining other than with an employee organization for school employees, the municipal employer shall be represented by the chief executive officer, whether elected or appointed, or his designated representatives. In such bargaining with an employee organization for school employees, the municipal employer shall be represented by the school committee or its designated representative or representatives.

For the purposes of collective bargaining, the representative of the municipal employer and the representative of the employees shall meet at reasonable times, including meetings appropriately related to the budget making process, and shall confer in good faith with respect to wages, hours and other conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and shall execute a written contract incorporating any agreement reached, but neither party shall be compelled to agree to a proposal or to make a concession. In the event that any part or provision of any such agreement is in conflict with any law, ordinance or by-law, such law, ordinance or by-law shall prevail so long as such conflict remains. If funds are necessary to implement such written agreement, a request for the necessary appropriation shall be submitted to the legislative body. If such request is rejected, the matter shall be returned to the parties for further bargaining. The preceding two sentences shall not apply to agreements reached by school committees in cities and towns in which the provisions of section thirty-four of chapter seventy-one are operative.

Section 1781. (a) If, after a reasonable period of negotiation over the terms of an agreement, a dispute exists between a municipal employer and an employee organization, or if no agreement has been reached sixty days prior to the final
date for setting the municipal budget, either party or the parties jointly may petition the state board of conciliation and arbitration to initiate fact finding.

(b) Upon receipt of such petition the board of conciliation and arbitration shall make an investigation to determine if the conditions set forth in paragraph (a) exist. If the board finds that such conditions do exist, it shall initiate fact finding. Prior to such fact finding, or prior to fact finding ordered by the state labor relations commission in accordance with the provisions of section one hundred and seventy-eight L, the board of conciliation and arbitration shall submit to the parties a panel of three qualified disinterested persons from which list the parties shall select one person to serve as the fact finder and shall notify the board of conciliation and arbitration of their choice. If the parties fail to select the fact finder within five calendar days of receipt of the list, the board of conciliation and arbitration shall appoint the person who shall serve as fact finder.

(c) The person selected or appointed as fact finder may establish dates and place of hearings which shall be where feasible in the locality of the municipality involved. Any such hearings shall be conducted in accordance with rules established by the board of conciliation and arbitration. Upon request, the board of conciliation and arbitration shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths. Upon completion of the hearings and within sixty days from the date of appointment, unless extended by the board of conciliation and arbitration for good cause shown, the fact finder shall make written findings of fact and recommendations for resolution of the dispute and shall cause the same to be served on the municipal employer and the employee organization involved.

(d) Only employee organizations which are designated or recognized as the exclusive representative under section one hundred and seventy-eight H shall be proper parties in initiating fact finding proceedings.

(e) The cost of fact finding proceedings under this section shall be divided equally between the municipal employer and said employee organization. Compensation for the fact finder shall be in accordance with a schedule of payment established by the board of conciliation and arbitration.

(f) Nothing in this section shall be construed to prohibit the fact finder from endeavoring to mediate the dispute in which he has been selected or appointed as fact finder.

Section 178K. The services of the state board of conciliation and arbitration shall also be available to municipal
employers and employee organizations for purposes of conciliation of grievances or contract disputes and for purposes of arbitration of disputes over the interpretation or application of the terms of a written agreement. Nothing in this section shall prevent the use of other arbitration tribunals in the resolution of disputes over the interpretation or application of the terms or written agreements between municipal employers and employee organizations.

Section 178L. Municipal employers or their representatives or agents are prohibited from:—(1) interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section one hundred and seventy-eight; (2) dominating or interfering with the formation, existence or administration of any employee organization; (3) discharging or otherwise discriminating against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this section; (4) refusing to bargain collectively in good faith with an employee organization which has been recognized or designated as the exclusive representative of employees in an appropriate unit; and (5) refusing to discuss grievances with the representatives of an employee organization recognized or designated as the exclusive representative in an appropriate unit.

Employee organizations or their agents are prohibited from (1) restraining or coercing a municipal employer in the selection of its representative for purposes of collective bargaining or the adjustment of grievances; and (2) if recognized or designated as the exclusive representative of employees in an appropriate unit, refusing to bargain collectively in good faith with a municipal employer.

When a complaint is made to the labor relations commission that a practice prohibited by this section has been committed, the commission may issue an order dismissing the complaint or may order a further investigation or a hearing thereon. If a hearing is ordered, the commission shall set the time and place for the hearing, which time and place may be changed by the commission at the request of one of the parties for cause shown. Any complaint may be amended with the permission of the commission. The municipal employer, the employee organization or the person so complained of shall have the right to file an answer to the original or amended complaint within five days after the service of such complaint or within such other time as the commission may limit. Such municipal employer, such employee organization or such persons shall have the right to appear in person or otherwise to defend against such complaint.
In the discretion of the commission any person may be allowed to intervene in such proceeding. In any hearing the commission shall not be bound by the technical rules of evidence prevailing in the courts. A transcript of the testimony taken at any hearing before the commission shall be filed with the commission.

If, upon all the testimony, the commission determines that a prohibited practice has been committed, it shall state its findings of fact and shall issue and cause to be served on the party committing the prohibited practice an order requiring it or him to cease and desist from such prohibited practice, and shall take such further affirmative action as will comply with the provisions of this section, including but not limited to the withdrawal of certification of an employee organization established by or assisted in its establishment by any such prohibited practice. If it is alleged that either party has refused to bargain collectively, the state labor relations commission shall order fact finding and direct the party at fault to pay the full costs thereof. It shall order the reinstatement with or without back pay of an employee discharged or discriminated against in violation of the first paragraph of this section. If, upon all of the testimony, the commission determines that a prohibited practice has not been or is not being committed, it shall state its finding of fact and shall issue an order dismissing the complaint.

Section 178M. It shall be unlawful for any employee to engage in, induce, or encourage any strike, work stoppage, slowdown or withholding of services by such employees.

Section 178N. Nothing in sections one hundred and seventy-eight F to one hundred and seventy-eight M, inclusive, shall diminish the authority and power of the civil service commission, or any retirement board or personnel board established by law, nor shall anything in said sections constitute a grant of the right to strike to employees of any municipal employer.

SECTION 3. Section 9B of chapter 23 of the General Laws, as appearing in section 1 of chapter 345 of the acts of 1938, is hereby amended by inserting after the word "inclusive" in line 4, the words: --, of the chapter, sections one hundred and seventy-eight H and one hundred and seventy-eight L of chapter one hundred and forty-nine.

Approved November 17, 1965.
APPENDIX F

TABLE OF CASES
TABLE OF CASES

Maine

Allen v. Archer (1860) 49 Me. 346.

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