

MAINE STATE LEGISLATURE

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April 15, 1942

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Subject: Questions asked by Department of Education re Retirement Laws Applicable to Superintendents of Schools.

The superintendents of schools fall into a distinct and unusual category and rulings applicable to them will probably not be applicable to any other class of persons. The laws pertinent to the superintendents of schools as they are affected by retirement provisions, are Sections 227 and following of Chapter 1 of the Public Laws of 1933, Chapter 303, Public Laws of 1941, and Chapter 328, Public Laws of 1941. You will note that under the 1933 State employee pension provisions, superintendents of schools were not included. By Chapter 303 of 1941, superintendents in service prior to July 1, 1924 are included in the definition of employee for pension purposes. However, Section 3 of this Act provides that the amendments whereby they became employees for pension purposes shall become null and void upon the effective date of a general contributory pension law for State employees. Chapter 328 of 1941 includes superintendents in service prior to July 1, 1924 as employees for the purposes of the retirement system.

It appears then that from date of writing to midnight, June 30, 1942, a superintendent in service prior to July 1, 1924, is an employee both for the purposes of the old State retirement system and the new retirement system, but that on July 1, 1942, such a superintendent is an employee under the new system, but for the application of the old State employee pension system he is not, on July 1, 1942, an eligible employee.

Considering now the questions asked by the Department of Education, the first question is as follows:

1. A superintendent will complete twenty-five or more years of service June 30, 1942. Is he eligible to receive a pension under Sections 227 to 233 inclusive of Chapter 1, P. L., 1933?

A. If eligible will he receive one-half his average salary for the last five years of service; or will his pension be limited to a maximum of \$1,200 per year?

B. If eligible as above, but he prefers not to retire at once, must he join the retirement system or may he continue his employment, and retire at will under the provisions of Chapter 1, P. L., 1933, as amended?

Frank I. Cowan, Attorney General
April 15, 1942
Page 2,

It appears to me that a superintendent in service prior to July 1, 1924, who retires before midnight, June 30th, 1942 and who has twenty-five years of service or twenty years of service and attained the age of seventy, is eligible to receive a pension under Sections 227 to 233 of Chapter 1, P. L., 1933 and

OK A. Notwithstanding the provisions of Subsection 3 of Section 227C of the new retirement law, his pension will be limited to a maximum of \$1,200 as provided in Chapter 303, P. L., 1941 since his retirement takes place before midnight of June 30th, 1942.

OK The only way such a superintendent might receive a pension in excess of \$1,200 would be by virtue of his becoming a member of the retirement system, which he can not do unless he remains in service on and after July 1, 1942.

B. Such a superintendent, eligible as above but who prefers not to retire at once must, if he desires to avail himself of the privileges or benefits of a retirement system, join the retirement system since the amendment to Chapter 1, P. L., 1933, namely Chapter 303, P. L., 1941, which included the superintendent in the old State employee system, becomes null and void on July 1, 1942 and he is on that date and thereafter no longer a State employee for the purposes of the old system. Subsection 3 of Section 227C of the new law provides that any employee who is eligible for a pension under the old law on the effective date of the new Act, shall retain the rights and benefits as were granted him under the old law. Note that under a strict construction of the statutes involved, a superintendent in service prior to July 1, 1924 does not in fact, on the effective date of the new law, have any rights under the old law even though he did have rights under the old law the instant before the new law became effective. I do not believe that this construction or application will come into play with respect to any other persons than superintendents of schools and this construction would not be required had the new law specified the condition of eligibility as on 'or before' the effective date.

*Reverse this
Do Superintendent
Can be eligible
until July 1, 1945*

2. What is the status of an employee of the State Department of Education who has been employed in his present capacity since 1923, and who was employed as a superintendent of schools from 1909 to the time of entering the State Department of Education?

Frank I. Cowan, Attorney General
April 15, 1942
Page 3.

Keeping in mind the three chapters of law referred to above and construing strictly the definitions, the timing of the definitions and the effective dates of their application and withdrawal of the application, it appears that before midnight June 30, 1942, you would add prior service as a superintendent to service as an employee of the Department to ascertain eligibility under Chapter 1, P. L. 1933, as amended by Chapter 303, P. L. 1941.

On July 1, 1942, to ascertain the prior service rating of such a person under the new retirement system, you would add years of service as an employee of the Department to prior service as a superintendent and such a person would be eligible under the new system at age 65.

If such person has not retired prior to midnight June 30, 1942 and on July 1, 1942 seeks to retain his rights under Chapter 1 of P. L. 1933, his rights must be based on his employment with the Department only and not include prior years as a superintendent, as the amendment which included such service for the purpose of the old pension law became null and void the instant the new law became effective.

3. Are superintendents of schools not in service as such prior to July 1, 1924 barred from the benefits of the State Employees Retirement Act, or are they automatically included unless action is taken by the Board of Trustees as provided in Chapter 328, Section 2270, Subsection 4?

The answer to this question appears to be: Yes, they are barred from the benefits of the State Employees Retirement Act. The term "employees" is specifically defined in Subsection 4 of Section 227A. This definition does not include superintendents of schools not in service as such prior to July 1, 1924. Subsection 4 of Section 2270 gives the Board of Trustees discretion with respect to certain classes of employees in connection with eligibility for membership. The Section refers to employees whose compensation is only partly paid by the State or who are serving on a temporary or other than per annum basis. The Department's question is probably predicated on the fact that a part of the pay of superintendents is paid by the State. The fact that the State makes a partial payment of superintendents salaries does not, of itself, render superintendents employees of the State or even partial employees to the extent of the amount of salary paid. The term employees as used in Subsection 4 is necessarily a defined term since the statute contains a definition of "employee". The word as used in the section must be applied as defined in the law. Therefore, the trustees have no right either to deny or admit superintendents not in service prior to July 1, 1924 from or to the retirement system.

Frank I. Cowan, Attorney General
April 15, 1942
Page 4.

4. Will superintendents who have already taken advantage of the provisions of Chapter 303 of 1941 automatically become subject to the provisions of the new retirement law, or will they remain subject to the original provisions under which they secured a pension?

The answer to this question is found in Section 227N of the new retirement law. This Section provides in part that all pensions payable to former employes retired under the provisions of Chapter 1 of P. L. 1933, as they existed immediately prior to the effective date of the new system, shall be continued and paid at the full amount stipulated under said law prior to such effective date.

Assistant Attorney General

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