

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

From:
The Attorney General

May 27, 1942

To:
The Commissioner of Education

Subject: State Employees Retirement Act,
as it applies to Superintendents of Schools.

Reference is made to your memorandum of February 14, 1942, in which you propound four questions pertaining to the status of superintendents of schools, or employees of the State who have former service as superintendents of schools to their credit under the Joint Contributory Retirement Act passed at the Special Session of the Legislature.

Before answering your questions, it appears to be advisable to set forth certain general principles as they will apply to service as a superintendent of schools.

First: Superintendents in service prior to July 1, 1924 are regarded as State employees for retirement purposes both under the provisions of the Joint Contributory Retirement Act and the provisions of Chapter 303, Public Laws of 1941.

Second: Chapter 303, Public Laws of 1941 is merely an expression of the foregoing principle subject only to the limitation that under the pension provisions of Sections 227 to 233 of Chapter 1, Public Laws of 1933, a superintendent may receive a pension at the rate of fifty percent of his average salary for the last five years, excepting that the amount shall not exceed \$1200.00.

Third: Section 3 of Chapter 303, Public Laws of 1941, while it is a repealing clause, does not in fact become fully operative until July 1, 1945, by virtue of the provisions of the Joint Contributory Retirement Law enacted subsequent to said chapter.

Having the foregoing in mind, we proceed to answer the questions propounded by you.

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 \$1200 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?

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

A. Notwithstanding the provisions of Subsection 3 of Section 227C of the new retirement law, his pension will be limited to a

maximum of \$1200 as provided in Chapter 303, P. L. 1941, since his retirement takes place before midnight of June 30th, 1942.

The only way such a superintendent might receive a pension in excess of \$1200 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 may continue in service and may within one year from July 1, 1942 elect to become a member of the Joint Contributory Retirement System, or he may not become a member of the system and on or before July 1, 1945 retire under the provisions of Chapter 1 of the Public Laws of 1933, as amended.

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?

Such an employee may elect within one year from July 1, 1942 to become a member of the Joint Contributory Retirement System, or he may elect not to become a member of the system. In the latter case, he may retire before July 1, 1945 under the provisions of Chapter 1 of the Public Laws of 1933, as amended, and his eligibility for such retirement will be based upon his years of service as a superintendent of school and, in addition thereto, his years of service as an employee in the State Department of Education.

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 227C, Subsection 4?

Yes, they are barred from the benefits of the Joint Contributory Retirement Act. The trustees of the Retirement System have no right either to deny or admit to the system superintendents not in service prior to July 1, 1924.

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 employees 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.

FRANK I. COWAN

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