

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

Section 227A (8) of said chapter 328 defines membership service as "service rendered while a member of the retirement system for which credit is allowable under Section 227-D".

Section 227-D (1) reads as follows: "All service of a member since he last became a member on account of which contributions are made shall be credited as membership service, *and none other.*"

It is the opinion of this department that these provisions preclude allowing any credit for membership service during a period when an employee was not actually a member of the system even though he wishes to make back contributions to cover the period he was not a member.

FRANK A. FARRINGTON
Deputy Attorney General

March 25, 1943

From:
Frank I. Cowan, Attorney General

To:
Governor Sewall

You ask me whether or not the fact that the Governor appoints the Trustees of the University of Maine should be considered in deciding whether we shall regard that institution as a private or a public college.

The charter of the University of Maine is contained in P. & S. Laws of 1865, Chapter 532. The name given at that time was Trustees of the State College of Agriculture and Mechanic Arts. This sets up a "body politic and corporate . . . having succession as hereinafter provided with power to establish and maintain, subject to the provisions and limitations of this act, such a college as is authorized and provided for by the Act of Congress . . . donating lands to the several states and territories which may provide colleges", etc.

By Section 3 of the act, the Governor and Council were given the power to examine into the affairs of the college and to direct the Attorney General to take action against the Trustees either individually or collectively if they were guilty of any acts of misfeasance or non-feasance which might prove injurious to the college.

The original act provided, in Section 4, that when a vacancy should occur in the original Board, it should be filled by the legislature; the second vacancy should be filled by the Trustees; the third by the legislature; the fourth by the Trustees and so on.

Two years later, in 1867, as appears in P. & S. Laws of that year, Chapter 362, the statute was changed to provide that vacancies in the Board of Trustees should be filled by the Governor and Council on nomination by the Board of Trustees. The Governor and Council were given complete authority in the matter by being empowered to reject a nomination of the Board and continue rejecting until a satisfactory nominee was submitted.