

# MAINE STATE LEGISLATURE

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STATE OF MAINE

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REPORT

OF THE

ATTORNEY GENERAL

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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.

P. & S. Laws 1869, Chapter 192 provided that the secretary of the Board of Agriculture should be made a Trustee, *ex officio*.

P. & S. Laws of 1867, Chapter 147, provided that females may be students at the College. The original Act, in Section 13 thereof, had provided "no charge shall be made for tuition to any student who is an inhabitant of this State". P. & S. Laws of 1879, Chapter 173, changed this by providing that a reasonable charge might be made for tuition, which act was repealed by P. & S. Laws 1891, Chapter 284.

P. & S. Laws 1897, Chapter 247, insisted that graduates of the State College of Agriculture and Mechanic Arts should have the same rights before boards of the State as graduates of other colleges; Chapter 550 of the same year granted to the Trustees \$2.00 per day when acting officially, and Chapter 551 of the same year changed the name of the institution to the University of Maine.

P. & S. Laws 1903, Chapter 108, provided that "reasonable tuition" could be charged but that agricultural students might receive their instruction without payment of tuition.

P. & S. Laws 1903, Chapter 393, authorized the Trustees to guarantee loans for the building of society houses on land of the College but declared that "nothing herein contained shall be construed as binding the State of Maine to pay said loans or any of them, or any part thereof, or any interest thereon; and provided further that no appropriation therefor shall hereafter be asked of the State of Maine".

P. & S. Laws 1911, Chapter 194, provides that the Trustees shall serve without pay but may receive actual expenses incurred in connection with their duties.

P. & S. Laws 1913, Chapter 128, provided that students in the Home Economics course might receive their tuition free.

It will be seen from the above that from its beginning the State College of Agriculture and Mechanic Arts, which later was renamed University of Maine, has been the constant care and ward of the State. However, there is nothing in the original act, nor in any subsequent act, which indicates that the legislature has at any time even considered destroying the dignity of the institution as a private college and setting it up as a mere adjunct of the general educational system of the State. The right of the College to act as a "body politic and corporate" has never been in any way changed and the general provisions of the original charter remain in no way modified. The acts of the legislature have been entirely along the lines suggested in Section 18 of the original charter which reads: "The legislature shall have the right to grant any further powers, to alter, limit or restrain any of the powers vested in the Trustees of the College established by this act, or shall be judged necessary to promote the best interests thereof", but have actually been extremely moderate in making alterations or setting limits or restraints on the powers previously granted.

The history of the University of Maine was reviewed somewhat by Judge Cornish in the case of *Orono v. Sigma Alpha Epsilon Society*, 105 Me., 215. This opinion is dated March 2, 1909, subsequent to the enactment of almost every one of the above mentioned amendments to the charter of the College. The things that the Judge says about the College are very largely dicta and, as such, not binding as precedents of our courts but, nevertheless, are entitled to great weight. In his opinion the Judge uses the following words: "No language could more plainly recognize the distinction between the corporation and the State. The legal status of this institution has been and is the same as that of the other Colleges in Maine chartered by Massachusetts or by Maine, Bowdoin College, Colby College and Bates College".

From the above it is plainly evident that the University of Maine is a private institution having all the rights and privileges of any private corporation within the limits of its charter. That charter is subject to modification just as the charters of every other corporation in the State of Maine set up during the last hundred years are subject to modification. The fact that the Legislature can modify the charter, and at times has done so, does not change the nature of the College as a private institution any more than the right of the State to change the charter of the Todd-Bath Shipbuilding Company changes the nature of that corporation.

FRANK I. COWAN

Attorney General

March 30, 1943

To:

C. M. White

Agriculture

From:

John Marshall, Assistant

Attorney General

*Federal-State Grading Work on Butter, Cheese, Eggs and Poultry*

1. Can Maine Department of Agriculture surrender all supervision of establishment of fees collection and distribution thereof as contemplated in paragraphs (b) and (c) on page 2 under subject heading "Food Distribution Administration" and paragraph (b) page 3 under subject heading "Mutual Agreements"?

The Maine Department of Agriculture cannot surrender its supervision of the matters expressly set forth in our statutes, and the Commissioner of Agriculture must account for all fees collected and the disbursement of funds in accordance with State law and the regulations of the Department of Agriculture.

The Commissioner of Agriculture does have the right to make such rules and regulations, including payment of such fees as will be rea-