

# MAINE STATE LEGISLATURE

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March 15, 1944

To Harry V. Gilson, Commissioner of Education  
From Frank I. Cowan, Attorney General

Mr. Roderick, under date of March 10, 1944, sent a memo in regard to membership in the Maine Teachers' Retirement Association of teachers who are teaching on "permit".

Section 155 of Chapter 19 of the Revised Statutes, as amended, provides for the qualifications of teachers and the certificates that shall be issued. I find from examination of your pamphlet of laws relative to public schools, on page 63, that you shall issue certificates to all candidates

1. Who pass satisfactory examinations in such branches as are required or permitted by law to be taught in the public schools;
2. Who in other respects fulfil the proper requirements;
3. Who are at least 17 years of age;
4. Who have completed not less than a standard secondary school course; or
5. shall present satisfactory evidence of such educational attainment, otherwise secured, as may be adjudged by the commissioner to be the equivalent of such standard secondary school course;
6. Provided that no certificate of secondary grade shall be granted to any person who has not completed two years of a college or normal school course;
7. An applicant shall furnish evidence of good moral character;
8. shall meet such requirements as to preliminary education and training as shall be prescribed by the commissioner; and
9. shall present satisfactory evidence of proper training in physiology and hygiene with especial reference to the effect of alcoholic drinks, stimulants and narcotics upon the human system;
10. Provided that certificates may be granted without the examination herein prescribed to
  - a) Graduates of colleges and Maine State normal schools;
  - b) Graduates of other normal training schools having a 2 years' course for graduates of high schools or academies;
  - c) Teachers of 2 years' service and satisfactory fitness;
  - d) Under rules prescribed by the commissioner, to persons holding state certificates granted by authority of other States.

Section 157 says, "No persons shall be employed to teach in any school under the supervision and control of any school board of any city, town, or plantation of this state, who does not hold a state certificate as herein provided. Provided, farther, that all state certificates heretofore granted shall continue in force in accordance with the terms stated thereon. (N.B? This language appears in the Revision of 1930 and presumably being a restatement of an early law, would bring that law down to date, so that certificates granted prior to 1930 "shall continue in force in accordance with the terms stated therein." Better take a look at a memo that I sent you some weeks ago, suggesting arbitrary revocation of all certificates issued to persons who have not taught in the State of Maine during the last twenty years, and see if we can still justify my advice of that date.)

Turning back to Section 155 above mentioned, we have the following language, "Provided, further, that any certificate granted under this or any preceding law may for sufficient cause be revoked and annulled." (N.B. This language also appears in the 1930 Revision of the Revised Statutes.) So now we have a case of Section 157 brought forward and providing that all State certificates heretofore granted shall continue in force in accordance with their terms, and at the same time a provision that any certificate granted under this or any preceding law, may for sufficient cause be revoked and annulled. The latter provision will, I believe, take precedence in importance over the former, but the words "for sufficient cause" become extremely important and cannot be ignored. Just what effect shall be given to the language, "Nothing in this section relative to revocation of teachers' certificates shall be retroactive," presents a problem which may sometime have to be answered by the courts. (I am wondering if the Revisor of Statutes consulted with you in regard to these conflicting provisions, so that the new proposed Revision has eliminated the difficulty.)

Now to get back to the specific question asked in Mr. Roderick's memorandum. In the first place, the statutes seem to be very clear that no person may be employed to teach unless he possessed certain qualifications. The statutes seem to be equally clear that the Commissioner issues a certificate of qualification. (I have found nothing in the statute in regard to temporary teaching "permits".)

Section 160 indicates that a person who is eligible to receive a teacher's certificate may register for employment as a teacher; but Section 158 says that "Whoever teaches a public school without first obtaining a state teachers' certificate as herein provided, forfeits not exceeding the sum contracted for his daily wages, for each day he so teaches, and is barred from receiving pay therefor."

Section 155 seems to indicate the minimum requirements for the issuance of such a certificate. This section gives a very wide leeway of discretion to the Commissioner; but it seems to tie his hands after he has issued the certificate. There is no provision for temporary certificates except in the words "either probationary or permanent," and it seems to me that the only qualifications are 1) that the certificate is either probationary or permanent, and 2) the grade of school in which the person is qualified to teach.

If the certificate is probationary, of course, the Commissioner has the implied, if not expressed, authority to set a limit to the certificate; but the word "proper" before the word "requirements" in the fifth line on page 63 of your pamphlet (Section 155) indicates that the Commissioner cannot act arbitrarily and that legally "improper" requirements would be frowned upon by the courts.

There is no necessity for accepting contributions from a person who is teaching under a probationary certificate. If the surrounding circumstances seem to indicate that the person will, at the termination of the probationary period, become eligible to receive a permanent certificate, then it might be wise, from an administrative standpoint, to accept such contributions. If, on the other hand, the circumstances indicate that the probationer will never become a permanent teacher, I see nothing in our law to justify acceptance of such contributions.

Frank I. Cowan  
Attorney General