

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

May 5, 1944

Earle R. Hayes, Secretary, Employees' Retirement System

I interpret the language of the amendment which appears in P. L. 1943, Chapter 50, §1, and which reads as follows:

"Provided further, that any person formerly employed by the state at any time during the period of 3 years prior to July 1, 1942, and who is re-employed by the state at any time prior to July 1, 1945, shall, upon becoming a member, be allowed prior service credit," to mean that if a person was in the employ of the State at any time during the period of three years prior to July 1, 1942, and if he, during that period or during the period up to June 30, 1945, shall have severed his connection with the State, and if, prior to July 1, 1945, he shall have been re-employed by the State, and if he shall then, upon such re-employment, become a member of the Retirement System, he shall be allowed prior service credit.

FRANK I. COWAN

Attorney-General

May 5, 1944

Earle R. Hayes, Secretary, Employees' Retirement System

I am taking this opportunity to reply to a query by W. Mayo Payson, corporation counsel for the City of Portland, which query bears date April 17, 1944, and asks whether or not a 15% temporary emergency increase in salaries needs to be considered in reckoning the amount of contributions and the amount of payment to a retired employee under the Jointly Contributory Retirement System. I find nothing in the law to prevent the Board's accepting a base wage or salary schedule submitted by a local district and ignoring a temporary increase, providing the local district carries a double column of figures, so that the burden shall not be on the Board to determine the amount of the base pay. However, if a local district adopts such a double column system, it must keep the Board fully informed at all times in regard to the actual amount being paid to the employees, both on the base system and the additional compensation, so that the Board can from its own figures determine, when the time for retirement arrives, that the correct basis for retirement compensation is used.

FRANK I. COWAN

Attorney-General

May 10, 1944

Thomas P. Brown, Chairman
Board of Selectmen
Perry, Maine

Dear Sir:—

Your letter of May 4th in regard to the number of voters necessary to be present at a town meeting and to take part in voting in order to vote appropriations legally and to authorize the selectmen to borrow funds, has just come to my attention.

If your meeting is properly called and the voters are warned, it is their right and duty to be present. Any who do not see fit to attend

thereby tacitly authorize those who do attend to do the voting for the town. I doubt if one voter would have the right to hold a meeting all by himself; but if a sufficient number congregate to elect the necessary officers for holding a meeting (provided the regular town officers are not present) I see no reason why the meeting should not be a legal one.

The only mention of a minimum number of voters in connection with a town meeting that I have noticed is R. S. Chapter 5, Section 4, as amended by the Public Laws of 1933, Chapter 198. This provides that not less than 10% of the voters registered in the biennial State election then last past, or in any case, *not less than ten registered voters*, may apply to a justice of the peace and have a special meeting called. It is possible that our courts might interpret that as setting a minimum number of voters for a town meeting. That, however, is a question for the courts, and any expression of opinion on my part would be without legal value.

You understand, of course, that the Attorney-General is not, under the law, attorney for the town of Perry and that the above reply is simply as a matter of courtesy. Under the law the Attorney-General can act as adviser to the Governor and Council, the two branches of the legislature, and heads of State departments.

Very truly yours,

FRANK I. COWAN
Attorney-General

May 11, 1944

Harry V. Gilson, Commissioner of Education

I have your memo of April 18th in regard to school board members who contract to teach in the same town or union.

It seems to me that a proper procedure is as follows:

- 1) Assume that the office of member of the school board and the office of teacher under that board are so incompatible that the acceptance of the position as teacher automatically vacates the position of member of the school board.
- 2) Advise the remaining members of a school board to fill the vacancy.
- 3) In case the teacher-member insists that he is still a member of the school board and the other members hesitate to elect someone to fill the vacancy, due to their fear of creating confusion and uncertainty, you have authority to instruct the local superintendent that State funds will be withheld while that teacher is occupying the dual position.

The statutes seem to be explicit on the subject of committee members being employed as teachers. There seems to be no discretion left in the Department of Education on this particular subject.

FRANK I. COWAN
Attorney-General

June 6, 1944

Guy R. Whitten, Deputy Commissioner of Insurance

Subject: Admission of Ohio Casualty Insurance Company
With reference to your memo relating to the application of the Ohio