STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

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for the calendar years

1943--1944

R. S. c. 7, §30 and sections following, provides a method "for the purpose of filling vacancies as provided in section 23 of this chapter, and nominating candidates not included in section 1 of this chapter." Section 23 of chapter 7 has to do with the case of a candidate who has been duly nominated in the primary and who has died before the date of the gubernatorial election, or has withdrawn in writing, or has otherwise forfeited his nomination.

This section cannot apply in the instant case, because we have an instance of an incumbent who has died in the middle of his term and in whose place an interim appointment has been made.

R. S. c. 7, §1, above referred to, speaks of "candidates for any state or county office." I think it is unnecessary to state that the office of county treasurer is a "county office," so R. S. c. 7, §30 does not refer to that office.

I find no other provision in our laws for electing a county treasurer to fill out the term of office of a deceased county treasurer unless the death occurs a sufficient time before the primaries so that names can be placed on the ballot in the regular and formal manner set up by the Legislature.

I have to advise you that you have no authority to comply with Mr. Creteau's request.

Very truly yours,

FRANK I. COWAN

Attorney-General

September 8, 1944

Harry V. Gilson, Commissioner Education

I have your memo of August 30, in regard to the application of §54-A, P. L. 1943, c. 300. The interpretation that has been given uniformly to this statute is that *it protects a public employee of the State, or a subdivision thereof, for a period equal to the duration of his term of employment.* This rule, however, would apply only to executives who are serving a term defined by statute. We have held that we can protect them during the term of office to which they were appointed, or for which they were elected and no longer. Even then we have found that in some cases it has been necessary to hold that the incumbent of the office has, by entering the Federal service, abandoned his employment thus creating an actual vacancy even though the abandonment was involuntary on his part. In brief, we have applied the statute to all persons who were employees without a term and to all employees who were under the Personnel Law protection and, so far as possible, to contract employees and to executive heads, although we have had to recognize that contract employees and executive heads are exceptional cases and oftentimes cannot be classified in such a way that their cases can be treated otherwise than on individual merits.

Considering the matter from the above point of view, we feel that a school teacher hired from year to year on contract should be employed for a period after his return, not less than the unfulfilled portion of his contract period.

The substitute teacher comes secondary to the returning service man.

The municipality should be very careful about making contracts with substitute teachers because if they make a binding term contract and the original man comes back, the returning service man is entitled to his job and his pay by reason of the law, while the substitute may be entitled to the pay by reason of his contract; thus if the contract does not take into consideration the possibility of its being avoided through return of a service man, the municipality may very well find itself paying two salaries for one piece of work.

A town has fulfilled its obligations to a school employee when he is reemployed for a period of time which represents the unexpired part of his original contract.

If a superintendent of schools has served two years on a three-year contract, the town is within its rights if it permits him to serve out his original contract after his return and then discharge him. A town, in the interest of teaching efficiency, cannot delay the replacement of a discharged service man until the end of the next school year or the next school term. Under the law, as we interpret it, he is entitled to reinstatement immediately.

FRANK I. COWAN
Attorney-General

September 14, 1944

Capt. Laurence C. Upton, Acting Chief State Police

Beano

I have your memo of Sept. 13, asking three questions in regard to Beano. I will answer them in the order in which you ask them.

1. Our general Sunday laws are still in effect. There is no suggestion of repeal in the Beano act. The intention of the legislature in limiting licenses to six-day periods was in order to avoid any suggestion of Sunday beano.
2. P. L. 1943, c. 355, §1, in its first sentence, uses the language—". . . . shall hold, conduct or operate the amusement commonly known as 'Beano' for the entertainment of the public within the state unless a license therefor is obtained from the chief of the state police." There is no question but what the operation by an agricultural fair without making a monetary charge to participants is, nevertheless, an operation "for the entertainment of the public." Whenever and wherever the amusement commonly known as Beano is conducted or operated "for the entertainment of the public" a license must be obtained.
3. The answer to Question 3, is "No." The reason is included in the answers to Questions 1 and 2.

FRANK I. COWAN
Attorney-General

September 22, 1944

I. W. Russell, Superintendent of Public Buildings

Superintendent of Public Buildings' Law

In your memo of August 30th you ask to be advised with regard to your duties under circumstances which you set forth as follows: