

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1945-1946

MAINE STATE
LIBRARY

Commissioner of Education is, under the Revised Statutes, an ex officio trustee of the Board. Thus at present there are nine members of that Board, including the ex officio member, the Commissioner of Education.

It would thus appear that vacancies are now filled by the nomination of the Governor and confirmed by the Council, except that the Alumni Association trustee is nominated by the alumni.

ABRAHAM BREITBARD
Deputy Attorney General

December 12, 1945

To Earle R. Hayes, Secretary, Employees' Retirement System
Re: Houlton Water Company

This department acknowledges receipt of your memo of December 5th wherein you request an opinion as to whether the employees of the Houlton Water Company are eligible to become members of the Employees' Retirement System of the State. Attached to your memo is a history of the legislation of this corporation, from which it appears that, although it was originally organized as a private corporation, legislation in 1901 by Chapter 464 of the Private and Special Laws authorized the Town of Houlton to acquire all the stock of this corporation so that complete ownership is in the Town of Houlton and its directors are chosen by the inhabitants of the town.

In 1943 by amendment (Chapter 26, P&SL) it was provided that said corporation shall hereafter be deemed for all purposes of taxation a *public municipal corporation*. Evidently this amendment was passed so as to relieve it of taxation in towns outside of Houlton where it maintained poles and transmission lines to supply electricity. Because of the fact that the corporation not only supplied the Town of Houlton with water and electricity, but also a number of additional towns and villages outside of that town, in *Greaves, Collector of the Town of Hodgdon vs. Houlton Water Company*, 140 Maine 158, the Court held that so far as the Town of Houlton was concerned the corporation was to be regarded as a public municipal corporation for the purpose of being immune from tax; but due to the fact that in supplying these outside towns it was in effect engaging in business of a private nature, its poles and transmission lines located in towns outside of Houlton were taxable by those towns.

I do not believe, however, that, if the tax question had not been remedied by the legislature, that would bear directly on the question of eligibility of its employees to join the State Employees' Retirement System, in view of the amendment contained in Chapter 101 of the Public Laws of 1945, by which the "employees of any . . . water district, or any quasi-municipal corporation" of the State may participate in the Retirement System. This amendment, which brought in employees of a water district or any other quasi-municipal corporation, would embrace the Houlton Water Company. I therefore advise you that its employees will be

eligible to become members of the State Employees' Retirement System, if the directors or trustees of the Water Company vote to approve such participation.

ABRAHAM BREITBARD
Deputy Attorney General

December 27, 1945

To Hon. Horace Hildreth, Governor of Maine
Re: Application for Pardon

It has been brought to my attention that an application for a pardon has been made by the mother of a fourteen-year-old boy who was recently committed to the State School for Boys, upon adjudication by the Judge of the Municipal Court that he was guilty of juvenile delinquency.

Under Section 2 of Chapter 133, judges of the municipal court, when sitting in a cause where a minor under seventeen years of age is charged with a criminal offense (in this case, a misdemeanor) exercise exclusive jurisdiction and hold a "juvenile court." It is further provided by specific provision in said section that "Any adjudication or judgment . . . shall be that the said child was guilty of juvenile delinquency, and no such adjudication or judgment shall be deemed to constitute a conviction for crime."

I am of the opinion that this case does not present a proper case for pardon under the provisions of the Constitution of Maine, since the adjudication is not a conviction of crime, which is an essential requirement under the Constitution which empowers the Governor with the advice and consent of the Council to exercise the powers of pardon therein enumerated.

It is very plain to me that it is only in cases of conviction of crime that the Governor is empowered to act, as in the last sentence of Section 11 of Article V, Part First, of the Constitution, it is provided that the Governor "shall communicate to the Legislature at each session thereof, each case of reprieve, remission of penalty, commutation or pardon granted, *stating the name of the convict, the crime of which he was convicted*, the sentence and its date, the date of the reprieve, remission, commutation or pardon, and the conditions, if any, upon which the same was granted."

It seems, where the legislature has by express provision protected minors from the stigma of having been convicted of crime, by providing that the adjudication shall be one for juvenile delinquency which shall not be considered a conviction for crime and cannot be used in any court or any other place as a record of conviction, that the grant of a pardon or reprieve would be a contradiction of what the legislature, by the legislation referred to, has tried to accomplish.

ABRAHAM BREITBARD
Deputy Attorney General