

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1945-1946

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My answer to this question is in the affirmative, and I will call your attention to the last sentence in Section 100 of Chapter 19, which reads as follows:

“Except that in special cases, special permits for greater gross weights may be granted by the state highway commission or such appropriate commission or official as is duly authorized elsewhere in this chapter.”

2. “If such a registration can be issued, can the fee collected exceed \$300.00 and if so how should the additional over \$300.00 be computed?”

In answer to this question I will say that the Highway Commission does not issue registration, but a permit for a load exceeding 40,000 pounds, and the Commission cannot collect, nor can the Secretary of State collect an additional fee over \$300 according to the table provided for in Section 18, Chapter 19, R. S. 1944.

3. “In accordance with the provisions of Sec. 89, Chap. 19, R. S. 1944, has the State Highway Commission legal authority to establish a rate of fees and to collect the same for permits issued under this section?”

In answer to this question I will say that I can find no statutory authority for the Commission to collect fees for permits issued under this section as amended, and I can find no statutory authority for the State Highway Commission to promulgate rules and regulations relating to fees for special permits under this section; so my answer to this question is in the negative.

RALPH W. FARRIS
Attorney General

February 4, 1946

To Earle R. Hayes, Secretary, Employees' Retirement System

This department acknowledges receipt of your memo of January 14th. The inquiry concerns the allowance of prior service credit to former employees of the State at any time during the three years prior to July 1, 1942, who are re-employed at any time prior to July 1, 1945, and who, upon re-employment, become members of the State Employees' Retirement System.

The question is whether an employee who was “laid off” by any department previous to July 1, 1942, and who was re-employed subsequent to July 1, 1945, but who could not take advantage of the provisions of this law because such person was then in the military service and was not discharged from said service until after July 1, 1945, can now receive credit for his prior service.

You ask whether under subsection 2 of Section 4 of Chapter 60, the Board of Trustees may allow prior service credit, though such person did not bring himself within the provisions of this subsection, being prevented from doing so because of the fact that such person was in military service. A subsidiary question arises whether the Board may take into considera-

tion the fact that some of these employees were laid off through no fault of their own and due to the curtailment of the activities of the department involved.

A familiar and fundamental rule of statutory construction is that where a statute is clear and plain, there is no room for interpretation. Consequently, the statute must be interpreted as it is written. There is no ambiguity in the statute. By its plain terms, prior service credit may be allowed only to those who were re-employed prior to July 1, 1945, and who were formerly employed by the State at any time during the period of three years prior to July 1, 1942. We have no right to enlarge the time or consider the question of whether the cessation of employment by the State was due to no fault of the employee.

I feel, however, as no doubt you and the Board of Trustees feel, that returning veterans should not be deprived of the benefits of the act under consideration because they were prevented from becoming re-employed prior to July 1, 1945. I would suggest, therefore, that at the next session of the legislature an amendment be introduced allowing discharged servicemen who become re-employed to have the advantage of prior service credits.

ABRAHAM BREITBARD
Deputy Attorney General

February 6, 1946

To C. P. Bradford, Superintendent, State Park Commission
Re: Tenure of Office

Receipt is acknowledged of your memorandum of the 5th instant, inquiring about the status of two members of the State Park Commission, whose terms expired on February 4th. These two members also acted as chairman and secretary, respectively, of the Commission. The act creating the Park Commission does not provide that the members thereof, who are appointed by the Governor, shall hold over until their successors are appointed and qualified. Notwithstanding, however, the omission of such a provision, they do, in my opinion, hold over until a successor is appointed and qualifies. You are, therefore, advised that they may continue to act as members of the Commission until they are either re-appointed or succeeded by new members.

ABRAHAM BREITBARD
Deputy Attorney General

February 7, 1946

To Harrison C. Greenleaf, Commissioner of Institutional Service

This is in reply to your memo of February 6th, bringing to my attention the fact that has become eligible for parole . . . by reason of the fact that on writ of error his sentence was reduced to 2½ to 5 years. The original sentence was 4 to 8 years. The reason for the reduction was a defect in the indictment which . . . reduced the crime to simple larceny.