

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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September 4, 1946

To Harrison C. Greenleaf, Commissioner of Institutional Service
Re: MSP 7617

Receipt is acknowledged of your memo of September 3rd, advising that the above subject is an inmate of the Maine State Prison, serving a sentence of 4 to 8 years on a charge of breaking, entering and larceny, and another sentence of 1 to 2 years on a charge of escaping from the county jail, both of which were imposed on June 8, 1943, by the same court, without any reference as to whether the same were to run consecutively or concurrently.

In the matter of *Breton, Petitioner*, 93 Maine 39 at page 42, our Court declared the rule to be as follows:

"All the authorities agree . . . that in the absence of any statute, if it is not stated in either of two sentences imposed at the same time that one of them shall take effect at the expiration of the other, the two periods of time named will run concurrently, and the two punishments be executed simultaneously. Such Mr. Bishop declares to be the rule of the common law. . . and such has been the unquestioned rule of procedure in this state. It is familiar practice that wherever the court imposing several sentences desires to have one begin on the expiration of another, that fact is expressly stated in the sentence; and whenever the court inadvertently fails to have the sentence recorded in that form, or from leniency intentionally omits to add such a provision, and the convict is committed in pursuance of such sentences, he is either voluntarily released by the jailer, or discharged on habeas corpus at the expiration of the longest term named in either of the sentences."

I therefore advise you that under the rule above stated, the sentences imposed on the subject above named would run concurrently and he would be eligible for parole after having served the minimum of the 4 to 8 year sentence.

ABRAHAM BREITBARD
Deputy Attorney General

September 9, 1946

To E. E. Roderick, Deputy Commissioner of Education
Re: Maine Teachers' Pension Law

This department acknowledges receipt of your memo of September 6th requesting to be advised concerning an applicant for a State teacher's pension, who taught 26 years, from 1895 to 1921, in the City of Portland, but thereafter taught in another State.

Under our pension law, Section 212 of Chapter 37, not only must a teacher, in order to qualify for a pension, have been employed for the prescribed number of years, but 20 years of such employment, "including the 15 years immediately preceding retirement, shall have been in this state."

It is quite clear from the above quotation that a teacher must have been employed in this State for the 15 years immediately preceding her retirement in order to qualify for the pension. Under the facts in the case which is the subject of your inquiry, the teacher would not be entitled to a pension.

ABRAHAM BREITBARD
Deputy Attorney General

September 12, 1946

To E. E. Roderick, Deputy Commissioner of Education
Re: Section 218-C, Chapter 239, P. L. 1945

This department acknowledges receipt of your memo of the 10th, asking for an interpretation of the above-mentioned section, which reads as follows:

“Reinstatement. Any teacher in service prior to July 1, 1924, who shall have withdrawn from service in the public schools of the state, shall, on being reemployed therein, be eligible to receive a pension under the provisions of sections 212 to 218, inclusive, upon payment to the state of an amount equal to 5% of the salary he received during his last year of service as a teacher in the public schools of the state for each year he was absent from such service.”

I understand that inquiry has been made by teachers who have left the service prior to July 21, 1945, the effective date of the act, whether they would be eligible for the pension benefits upon being re-employed and paying to the State an amount equal to 5% of the salary received by them during their last year of service for the number of years of their absence from the service.

I am of the opinion that the only persons eligible to the benefits under this section are those who were in the employ prior to July 1, 1924, and who have withdrawn from the service subsequent to July 21, 1945, when the act became effective. This is made quite clear when you consider the chapter as a whole. In the first place the pension benefits were increased by amendments to Sections 212, 213 and 214 of Chapter 37 of the Revised Statutes. Next, to provide the funds for this increase and future pensions, several new sections were added including the one under consideration, which required a contribution of 5% of the teacher's salary, but which was not to exceed \$60 a year. This was Section 218-A. Section 218-D provided for the return of such contributions to a teacher who has withdrawn or been dismissed from the service before becoming eligible for retirement under the provisions of Sections 212 to 218 inclusive, or, upon her death, to the spouse, if living, or to her legal representatives. The teacher in 218-C “who shall have withdrawn from service” is referable to Section 218-B and relates to a teacher who has made contributions under the act and has withdrawn from the service.