

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

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 Any teacher in service prior to July 1, 1924, who shall have withdrawn from service in the public schools of the state, shall, on being reemployed therein, be eligible to receive a pension under the provisions of sections 212 to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eligible to the benefits under this section are those who were in the employ prior to July 1, 1924, and who have withdrawn from the service subsequent to July 21, 1945, when the act became effective.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.

The purpose of Section 218-C was to protect the teacher who was employed prior to July 1, 1924, and who continued in such employment after the effective date of this act and then withdrew before she became eligible to a pension. Upon her re-employment and upon making the contributions during the period she was absent, including the contributions withdrawn, she could then qualify for any of the pensions provided she accumulated the years of service to make her eligible for such pension.

I believe this to be the clear intention of the legislature. To rule otherwise would be to hold that the State was embarking on the annuity insurance business on a premium basis, rather than creating a pension system as a reward for services rendered to the State for the prescribed periods of 25, 30 and 35 years.

I therefore advise you that no teacher is eligible under this section for a pension other than one who was in the service prior to July 1, 1924, and withdrew from the service subsequent to July 21, 1945.

ABRAHAM BREITBARD
Deputy Attorney General

September 26, 1946

To Lucius D. Barrows, Chief Engineer, State Highway Commission

In reply to your memo of September 23rd, this department advises you that the liability of the State for damages in connection with the construction or repair of highways is prescribed by statute and the limits thereof are fixed by Chapter 20, Section 15, which allows the assessment of damages for any injury to the owner of adjoining land, where such damage is caused by the altering, widening, or change of grade, and the procedure for assessing the damages is prescribed.

Evidently, Mr. Berman was under the impression that funds are allocated by the Federal and State Governments to take care of such damage as he describes, namely, the interruption of business, spoilage of food, loss of profit, payment of rent, etc., by the owner of a diner located adjacent to the highway under construction.

These items are not an element of damage under the statute. . .

ABRAHAM BREITBARD
Deputy Attorney General

October 1, 1946

To Laurence C. Upton, Chief, Maine State Police
Re: Maine Turnpike Authority

I have your memo of September 24th, calling my attention to the provisions of Section 11 of Chapter 69, P. & S. L. 1941, relating to the Maine Turnpike Authority. You state in your memo that you understand that at least a part of this toll highway will be open for travel during the next two years, and that you have accordingly made provision in the State