

MAINE STATE LEGISLATURE

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October 28, 1946

To Fred M. Berry, State Auditor

Referring to your memorandum of October 8th relating to the interpretation of Chapter 239, Section 218-A of the Public Laws of 1945, appertaining to contributions of teachers who are subject to pension rights under the provisions of Sections 212-218, Chapter 37, R. S., as amended. The 1945 Act provided additional Sections, 218-A to 218-C to Chapter 37 of the Revised Statutes.

Section 218-A, which is Section 4 of Chapter 239, P. L. 1945, provides that every teacher who may be eligible to retire under the provisions of Sections 212-218 inclusive shall be required to contribute 5% of his or her salary annually, not to exceed \$60. a year, which contributions shall be added to the amounts appropriated by the legislature to provide pensions for teachers retired under the provisions of Sections 212-218 inclusive. This relates only to non-contributory teachers who were employed prior to June 30, 1924, and as you state in your memo, since that date all new teachers must become members of the Maine Teachers' Retirement System.

You state in the third paragraph of your memo of October 8th that your audit discloses that for the first year of operation receipts from teachers approximated \$45,500. and that this amount was added to the regular appropriation, making a total of \$382,600. which was provided by the legislature for teachers' pensions. You further state that after expenditures for pensions, a balance remained in the amount of \$55,600. Transfers from this balance were effected in the amount of \$30,500 for other additional activities, and \$25,100 was lapsed to the unappropriated surplus account of the General Fund.

In paragraph 4 of your memo you advance the opinion that the balance in this account should be carried forward from year to year, in order to meet the contingencies of pension payments, since the teacher is contributing monies toward the payment of pensions, and that, by making a careful account of the contributions received, it may be possible at some future date to reduce the present 5% assessment of non-contributory teachers and ease the burden now imposed on them; and you ask the following question:

"Whether or not, the unexpended balance shown in the 'Pension for Retired Teachers' account can rightfully be lapsed to the State Unappropriated Surplus Account, or used for other additional purposes than payment of pensions."

As a result of the conference held in my office, at which you and the State Controller were present with members of your respective staffs, I will say that it is my opinion, where the law does not specifically provide that this fund should be a carrying account and inasmuch as considerably more money was paid for the expenditures and payments of pensions from this appropriation than the amount contributed by the teachers under the Act of 1945, that whatever balance was on hand at the end of the fiscal year was a part of the legislative appropriation and was properly lapsed to the unappropriated surplus account of the General Fund. This opinion is based upon the language contained in Section 218-A, Section 4 of Chapter 239 of the Public Laws of 1945, which provides that contributions shall be added to the amounts appropriated by the legislature, etc.

Ralph W. Farris
Attorney General

RWF:c
cc: State Controller
Commissioner of Education