

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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In reply to your question: When the Private and Special Act of 1885 was enacted, it referred to Sections 28 to 33 of Chapter 11 of the Revised Statutes of 1883, which related to free high schools of the day. The statute has been revised many times since the 1883 Revision, and the provisions of Sections 28-33 inclusive of Chapter 11 have been materially amended by various later acts; and the provisions of Section 96 of Chapter 37, as amended by the Public Laws of 1945, refer specifically to statutes contemplated by Section 89 of Chapter 37, R. S., which classifies free high schools, academies, and seminaries.

It is my opinion that the provisions of Section 96 of said Chapter 37 and the provisions of Section 89 of Chapter 37, relating to this subject, and the amendment in Chapter 216, P. L. 1945, impliedly repealed Chapter 500, P. & S. L. 1885, and that a joint committee can be formed, and when the amount to be paid under the contract shall equal or exceed the income of the Academy for the preceding year, exclusive of sums paid such academy by the contracting town, it is mandatory that a joint committee be formed. The action of the legislature in Chapter 321, P. L. 1945, would further indicate that it was the intention of the legislature that the provisions of any special act would be superseded by the public laws which are brought up to date in the new Revision and the amendments of 1945.

RALPH W. FARRIS
Attorney General

October 30, 1946

To Guy R. Whitten, Deputy Insurance Commissioner

Referring to your memo of October 21st and considering proposed legislation in the coming legislature, you say that the Insurance Commissioner is giving attention to certain phases of the tax law and you call my attention to the action of the 1945 legislature in taking all discriminatory tax laws from our statutes, thereby putting our house in order according to a late decision of the U. S. Supreme Court, so that there would be no protest payments of taxes and no costly litigation. You enclosed a copy of an opinion from the U. S. Supreme Court involving the case of the *Prudential Insurance Company vs. Benjamin*, as Insurance Commissioner of the State of South Carolina. I have already received this decision in my Advance Sheets of the U. S. Supreme Court Reporter, and I am not in a position to say that it decides anything definitely upon the subject to which you refer.

For this reason it is my opinion that the Insurance Department of this State should not change its laws every time the U. S. Supreme Court hands down a decision on insurance matters.

You state that you would include in your proposed legislation at the coming legislature an amendment which would put our tax laws back on the same basis as they were at the time of the last legislative enactment. In other words, you propose a tax of 2% on the gross direct premiums of foreign companies and 1% on the domestic companies.

If you will recall, considerable pressure was brought to bear on my office by you as Acting Commissioner and I assigned an Assistant to your office to assist and advise you in preparing a bill that would eliminate all discriminatory features in our insurance tax laws, because many foreign companies had advised you that they would not pay their taxes in 1945 and would raise the question of discriminatory law, basing their action on the U. S. Supreme Court decision in the Southeastern Underwriters case. You and the members of your department are fully aware of the resolutions passed by Congress, giving the several States an opportunity to put their houses in order, before passing any federal legislation relating to the taxing of insurance companies by the several States. In view of the fact that we have conflicting opinions from the U. S. Supreme Court touching on this subject matter and going all around the subject matter wherever possible, and that some of them are contained in dissenting opinions of non-concurrence of Justices, it is my advice to you to leave the tax laws on insurance companies alone at this session of the legislature and see what Congress or the U. S. Supreme Court does next. We had no trouble collecting our taxes and we avoided litigation; and if you go tinkering with the statute again, you will open up many avenues of litigation which I can see ahead, in view of the unsettled condition of the question whether or not the insurance business in the several States comes within the Interstate Commerce clause of the United States Constitution.

RALPH W. FARRIS
Attorney General

October 31, 1946

To E. E. Roderick, Deputy Commissioner of Education

In your memo of October 17, 1946, you inquire whether a teacher's pension would be affected if she, at the insistence of the Director of Education for Handicapped Children, agreed to teach part time, a total of 10 hours per week. I understand that this type of work requires individual instruction in the home of the pupil where the teacher calls. The pay is by the hour and rather small. Such employment would not be very attractive, except perhaps to retired teachers.

The statute provides that ". . . The payment of any pension shall be suspended whenever the person to whom said pension has been granted resumes teaching in any private or public school. . ." Section 216 of Chapter 37, R. S. 1944.

I think that resumption of teaching as it is here used refers to full time instruction in the usual and customary manner as the teacher engaged in before retiring. The evident purpose was not to pay a teacher a pension and at the same time a full salary for teaching, thus suspension of the pension was provided for during such period of employment. It would not in my opinion apply to the facts here under consideration.

I therefore advise you that pensioned teachers may be employed for this type of instruction, without impairing their pension payments.

ABRAHAM BREITBARD
Deputy Attorney General