

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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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