

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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The next question is as follows: "In respect to evening schools, can a superintending school committee, after a vote of the town to raise funds for this purpose, contract with an academy located within the town to furnish said evening school education?"

Answer. With the permission of the Commissioner of Education, under the provisions of Section 166 this can be done, and it would be construed to be under the direction and supervision of the superintending school committee, if it meets with the approval of the Commissioner of Education in regard to the qualifications of instructors, length of term, class attendance, and subjects offered.

Your next question is: "If such contracting is possible, may the state reimburse the town for 2/3 of the cost of instruction?"

My answer to this question is in the affirmative. I do not believe it would be good policy for the academy to make a profit on the evening students.

In regard to Section 35, there is an error in the Revision of the Statutes, 1944, in that it refers to Sections 32-34, inclusive. It should refer only to Section 34, which has to do with manual training. My reason for saying this is that upon examination of Chapter 11, P. L. 1935, which amended Section 25 of Chapter 18, R. S. 1930, and Section 167 of said chapter, which took care of this situation, and there is no amendment of legislature that includes the provisions of Section 32, R. S. 1944, as to limiting the age to 21 years.

Upon checking the notes in the Revisor's office, I find that Section 32 was included in Section 35, which has to do with evening schools and should not properly be in said Section 35; but the same was adopted by the legislature in September, 1944. It should be eliminated at the next session of the legislature.

RALPH W. FARRIS
Attorney General

November 13, 1946

To E. E. Roderick, Deputy Commissioner of Education

In your memo of November 12th to this department, you wish to be advised to whom payment should be made of contributions on decease of a member of the Teachers' Retirement System, before he became eligible to retirement, and who had withdrawn from service shortly prior to his death. In his application he designated his mother as "beneficiary" to receive these contributions in the event of his death. Upon his decease it appears he left a wife surviving.

Section 233 of Chapter 37, so far as here pertinent, is as follows:

"I. Any member of the retirement association withdrawing from service in the public schools of the state, by resignation or dismissal, before becoming eligible to retirement under the provisions of sections

221 to 241, inclusive, shall be entitled to receive from the annuity fund all amounts contributed thereto as assessments together with such interest as has accrued thereon.

"II. In case of the death of such member under the circumstances above set forth, the several amounts to which he would be entitled, if living, shall be paid to a surviving husband or wife, or to the legal representatives of such deceased member, as may be elected, subject to the rules and regulations of the retirement board."

It is quite plain that neither of these persons is entitled to this fund, but the same is to be paid to his executor or administrator. While the member may elect to whom payment shall be made in the event of his death, such election is however limited to "a surviving husband or wife, or to the legal representatives of such deceased member. . ."

Under our statutes no testamentary disposition of property can be made except by a will duly executed in accordance with statutory formalities. An exception has been made by the statute above quoted, which allows the refund of contributions with interest to be paid to a surviving spouse at his election. The designation of the mother in his application would not comply with this act.

I therefore advise you that payment is to be made only to his administrator or executor, duly appointed by the Probate Court.

ABRAHAM BREITBARD
Deputy Attorney General

November 14, 1946

To Employees' Retirement Board

I have given considerable thought to the subject concerning the right of employees of a participating local district to retire and receive the benefits provided for in the second paragraph of Subsection 3 of Section 3 of Chapter 60, R. S. 1944, as amended by Chapter 291, P. L. 1945.

I have heretofore expressed my doubts as to the applicability of this section to employees of a participating local district, but I did not so rule in view of the representations by the secretary of the Board that by the amendment in 1945 it was his understanding that all employees were to be included, although no specific mention was made of employees of a participating local district at the time the amendment was under consideration by the legislature. But after careful study I am of the opinion that the provisions of this subsection apply only to a particular group of State employees, who can qualify thereunder. All others receive the benefits under Section 5 and these are the only benefits that employees of a participating local district may participate in. This is very clear from a study of the history of the legislation relative to the group who were to be protected by this provision.