

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

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.

Prior to the enactment of the "Jointly Contributory Retirement System" in 1941, pensions were provided for State employees by P. L. 1933, Chapter 1, Sections 227-233. Employees in the service 25 years or more, or those who have attained the age of 70 years after 20 years of service, upon recommendation of a department head or a superintendent of an institution, might be retired and the Governor and Council were authorized to fix the pension in an amount not to exceed 1/2 of the average wage or salary the employee was receiving for the 5 years previous to his retirement.

By P. L. 1941, Chapter 328, Sections 227-233 of Chapter 1 of the Public Laws of 1933 were repealed and in place thereof twenty new sections to be numbered 227-A to 227-T, inclusive, were substituted for them and are the "Jointly Contributory Retirement System for State Employees," above referred to. In Section 227-C thereof, subsection 3, provision, however, was made to preserve the benefits to those employees who were eligible or had acquired certain privileges thereunder, by the following:

"Notwithstanding the repeal of sections 227 to 233, inclusive, of chapter 1 of the public laws of 1933, any employee who is eligible for a pension under the provisions of such sections on the effective date of this act, or who would have become so eligible on or before July 1, 1945, shall under the terms of this act, retain the same rights and benefits as were granted to him under such sections, excepting that any employee who has attained age 70 shall be retired forthwith, or upon the attainment of such age. . ."

It is to be noted that included were those who would have become eligible to the benefits on or before July 1, 1945; thus these rights were preserved to those only who might be eligible on the effective date of the act, which was July 1, 1942, or those who became eligible on or before July 1, 1945.

I am informed that certain State employees, particularly those who would be cut off from these benefits by lack of a year's service or less were responsible for the amendment to this section in 1943, by Chapter 329, Section 1, and thus the section above referred to was repealed, and in place thereof was enacted what is now Subsection 3 of Section 3 of Chapter 60, the first paragraph of which related to employees who became members prior to July 1, 1943, and who had total prior service credit of at least 13 years, and the second paragraph made provision for those who became members prior to July 1, 1943, and who had a total prior credit of at least 22 years and were entitled to a total retirement allowance of 1/2 their average final compensation, provided they were still members and had creditable service of at least 25 years on retirement. The amendment to this paragraph, it is to be noted, extended the period to be eligible under this section another year. In other words, where the prior act provided for eligibility to retirement in order to receive these benefits, on or prior to July 1, 1945, this amendment extended the time to July 1, 1946.

I am therefore of the opinion that the benefits under Subsection 3 apply to State employees only and are not applicable to employees of a participating local district.

While under Section 15 of Chapter 60, employees of a participating local district have the same benefits as State employees for which contributions are made and accrued liability is paid by the participating district for prior service credit, such benefits are those provided by Section 5 of said act, which are the retirement benefits to all State employees except those for whom specific provision was made under Subsection 3 of Section 3.

Since I have ruled that these provisions are applicable to a specific group of State employees, it becomes unnecessary to consider the effect of the amendment thereto by P. L. 1945, Chapter 291. However, in order that there be no misunderstanding about this amendment, I desire to point out that it applies only to State employees who elected not to become members of the System by filing a waiver under Subsection 2 of Section 3, and who prior to this amendment had one year after the establishment of the system, or, to be specific, until July 1, 1943, in which to join, notwithstanding the waiver, in order to receive prior service credit. The amendment extended that time to 4 years and correspondingly changed paragraph 2 of Subsection 3, allowing, in that case, that back contributions be paid for the period to July 1, 1946.

There is no similar provision as to waiver with regard to employees of a participating local district. Membership of existing employees is optional, except that in order to receive prior service credit, they must elect to join within 1 year after the local district becomes a participant in this system (Subsection 2, Section 15).

However, as to those who become employees after the local district joins, membership is compulsory.

It was otherwise with State employees. Membership was compulsory as to those who were employed at the time the act took effect, unless within 30 days thereafter they elected, in writing, to waive all present and prospective benefits (Subsection 2 of Section 3).

ABRAHAM BREITBARD
Deputy Attorney General

November 14, 1946

To Minnie E. Hanley, Factory Inspector

In your memo of November 5th you ask to be advised whether: "Under the Maine law can the Superintendent of Schools at Kittery issue a work permit to a minor under 15 to be employed in a Bowling Alley in Portsmouth, New Hampshire, after school hours?"

The child in the case under consideration, you inform me, is 14 years of age.