

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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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.

Section 17 of Chapter 25, as amended by P. L. 1945, Chapters 277-1 and 309, prohibits employment of a child under 15 years of age in a bowling alley; and except as provided in the following section no child between the ages of 15 and 16 years shall be so employed during school hours without a permit from the school superintendent of the city or town in which the child resides.

As to a child under 15 the prohibition is absolute and such employment is prohibited during and after school hours. The superintendent thus was without authority to issue a permit at all.

I desire, however, to call to your attention the fact that our laws have no extraterritorial force. The child's employment in New Hampshire, and whether the law was violated, would depend on the laws of that State. Our statute is directed against employers within the State and penalizes only them. The superintendent of schools, however, in any case could not issue a permit to a minor authorizing his employment outside the State.

ABRAHAM BREITBARD
Deputy Attorney General

November 14, 1946

To Paul A. MacDonald, Deputy Secretary of State

Your inquiry concerns who on January 24, 1945, was convicted of driving under the influence of intoxicating liquor and sentenced to pay a fine of \$100 and costs and was thereupon committed in default of payment, according to the record forwarded to you by the Judge of the Houlton Municipal Court. His license to operate was thereupon revoked, in accordance with the mandatory provision of the statute.

On September 11, 1945, while the revocation was still in force, he was arraigned in the Bangor Municipal Court, charged with operating while under the influence of intoxicating liquor. To this charge he pleaded guilty and he was thereupon sentenced to pay a fine of \$200 and costs and in addition to serve three months in the county jail. The jail sentence was probated on condition that he pay the fine and costs. He appealed to the Superior Court. At the September Term, 1946, the case was filed. The record does not show that the plea of guilty in the court below was withdrawn, by leave of the presiding justice in the appellate court.

The question is whether on the record the respondent stands convicted as a second offender, so that his right to operate a motor vehicle should be revoked for a period of 5 years.

Our court has not had occasion to pass on the question whether after a plea of guilty in a municipal court and appeal, the respondent may without leave withdraw a guilty plea and plead not guilty and have a jury trial on the respondent's guilt or innocence. The precise question