STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

February 3, 1947

To David H. Stevens, State Tax Assessor

I have your memo of January 31st relating to the definitions of "officer" and "real estate" under the provisions of paragraph 3 of Section 6 of Chapter 81 relating to exemptions of real estate of "all literary or scientific institutions occupied by them for their own purposes or by any officer thereof as a residence. . ."

In accordance with legal principles and the interpretation of the statute as enunciated by our courts, the provisions of R. S. Chapter 81, Section 6, paragraph 3, are subject to the limitation that the exemption applies only to property occupied by the corporation for its own purposes. It is my interpretation of the statute that real estate means any property owned by the school or institution which comes within the provisions of this statute and is used for school purposes, such as the residence of an instructor or teacher, who would be deemed an officer charged with a duty by the institution; provided that there is no revenue derived from the use of the real estate or the residential property.

In *Camp Emoh Associates vs. Lyman*, 132 Maine 67, the Court points out:

> "Immunity from assessment depends not upon simple ownership and possession of property, nor necessarily upon the extent or length of the actual occupancy thereof, although this is entitled to consideration, but upon exclusive occupation of such a nature as, within the meaning of the statute, contributes immediately to the promotion of benevolence and charity, and to the advancement thereof. . ."

In the case under discussion, residential property occupied by a faculty member with one or more students living in the property would be considered a dormitory or residence of an officer and would be exempt from taxation, provided it was used exclusively for school purposes. It seems to me that the criterion for the Assessor is whether the work of the institution is of a business character or whether it is devoted to literary and scientific purposes for its own use. If they should rent or lease such real estate during the summer months and receive rental therefrom, it is my opinion that this would take them out of the provisions of the statute, as the property would not be occupied exclusively for their own purposes.

RALPH W. FARRIS
Attorney General

February 17, 1947

To Hon. Harold I. Goss, Secretary of State, and
Col. Laurence C. Upton, Chief, Maine State Police

I have your joint memo of February 7th, signed by both of you, requesting an opinion as to the legality of an appropriation set up in the State Police budget as a sum to be expended in the promotion of highway safety under the jurisdiction of the Highway Safety Bureau of the State Police Department, acting in coöperation with a Highway Safety Coördinating Committee to be appointed by the Governor.

From my conversation with you, I understand that you now have an item in your appropriation for the expenses of the Highway Safety Bureau in the State Police Department, and the break-down in the Finance Commissioner's office discloses same. For that reason it is my opinion that if the Appropriation Committee sees fit to budget the State Police an amount for Highway Safety within your department, you could use said funds in coöperation with a Highway Safety Coördinating Committee appointed either by the Governor or by the State Highway Commission.

RALPH W. FARRIS
Attorney General

February 17, 1947

To Earle R. Hayes, Director of Personnel
Re: Military Leave Law

I have your memo of February 5th relating to the Military Leave Law, especially Section 23 of Chapter 59, R. S. 1944, which provides that any employee regularly employed for at least six months by the State, county or municipality within the State, who has attained permanent status and who enters the military service shall not be deemed to have thereby resigned or abandoned his employment with the State.

The original enactment of this section was, as you state, by Chapter 314 of the Public Laws of 1939, which provided one year; this was reduced to six months by the provisions of Chapter 300, P. L. 1943, which is now the present statute above quoted.

You state that a former Attorney General ruled that at the time that Chapter 300, P. L. 1943, was enacted, the change from one year to six months' employment by the State could not be considered as retroactive. You further state that you did not agree with that opinion and do not now. You further state in your memo that it is your belief that any employee who has six months or more of service, regardless of the time during the war that he left the State service to enter the armed forces, should be entitled to military leave, and you would appreciate my advice at the present time as you have two cases pending.

No law is retroactive unless the intention of the legislature making it so is express in the act itself. Any State employee entering the armed services prior to July 9, 1943, the effective date of Chapter 300, P. L. 1943, would be under the 1939 Act and would require employment by the State for a period of at least one year. After July 9, 1943, any State employee entering the military service would be under the provisions of the 1943 Act, which requires regular employment by the State for a period of only six months.

"Retroactive," as applied to a statute, means a statute which embraces a new or additional burden, duty, obligation or liability as to past transactions. This statute did not impose any additional burden on the State employees. On the contrary it reduced the burden of requiring one year's employment with the State to six months in order to attain permanent status as a State employee.

RALPH W. FARRIS
Attorney General