

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

June 2, 1947

To A. K. Gardner, Commissioner of Agriculture
Re: Potato Tax

I received your memo of May 26th, enclosing a clipping taken from the May 8th issue of the VICTORIAN, published in Perth, N. B. You state that you are not interested in the article, except that it has steamed up some of the anti-potato tax group in Aroostook County and they are beginning to claim that our potato tax is unconstitutional.

All laws are constitutional until decided unconstitutional by courts of competent jurisdiction, upon a case properly brought before them.

In my opinion our potato tax law is constitutional. The Province of New Brunswick probably has a different tax set-up than we have in Maine. This tax is on the industry and not on all taxpayers of the State. There is nothing in the Constitution of Maine that prohibits any group from assessing a tax on the product that the members of that industry grow; and the only manner in which the question of constitutionality could be brought up is before the courts.

RALPH W. FARRIS
Attorney General

June 2, 1947

To Col. Laurence C. Upton, Chief, Maine State Police
Re: State Police Pay Schedule

I have your memo of May 26th, relating to the provisions of Chapter 385, P. L. 1947, which becomes effective on August 13th, whereas the emergency legislation providing for a temporary increase of \$7.20 a week ends on August 10th.

It is my opinion that when Chapter 385, P. L. 1947, was enacted, it was the intent of the legislature that the date of the adjournment would be by May 10th. That was my understanding of the situation at that time. The matter was called to my attention that it was the intent of the legislature that the temporary pay increase remain in force until the new schedule became effective on August 13th, which is 90 days following the adjournment of the legislature.

It is my opinion that the Controller should carry on the increase of \$7.20 until the provisions of Chapter 385, P. L. 1947, become effective on August 13th, and it would be legal for you to continue the \$7.20 without changing to a new schedule for a period of two days.

RALPH W. FARRIS
Attorney General

June 3, 1947

To Earle R. Hayes, Secretary, Employees' Retirement System

I received your memo of June 2nd, relating to the provisions of Section 1 of Chapter 384 of the Public Laws of 1947, containing the definitions of

various terms used in the Employees' Retirement Act, specifically the following:

1. "employee"
2. "teacher"
3. "public school"

You further call my attention to the definition of "employee" which reads in part, "and for the purposes of this chapter, teachers in the public schools." You inquire if this reference to public schools is controlled or limited by the definition of "public school" or whether the last half of the sentence dealing with the definition of "teacher" in effect makes an exception to both the paragraph dealing with the definition of "employee" and the paragraph dealing with the definition of "public school;" and you say that you would appreciate my early reply, as you have a specific case at Maine Central Institute.

In my opinion the definition of "teacher" includes teachers in *any* school which is supported at least 3/5ths by State or town appropriations, or, in the absence of such support, where the teachers have heretofore contributed to the Maine Teachers' Retirement Association, provided that such contributions have not been withdrawn. You state in your memo that the Maine Central Institute at Pittsfield is a school which is supported at least three-fifths by State or town appropriations, and if this is the case, I feel that teachers in that institution would come within the statutory definition of "teacher," regardless of whether or not it is a public school, because, as you will note, it relates to teachers teaching in *any* school which is supported, etc., etc., which goes beyond the definition of public school as provided in Section 1 of Chapter 384. As I understand the situation, some of the teachers in the Maine Central Institute at Pittsfield have contributed to the Maine Teachers' Retirement Association.

I further call your attention to the last sentence of paragraph four of Section 1 of Chapter 384, which reads as follows: "In all cases of doubt the board of trustees shall determine whether any person is an employee as defined in this chapter."

RALPH W. FARRIS
Attorney General

June 4, 1947

To H. A. Ladd, Commissioner of Education
Re: L.D. 837, (Chapter 384, P. L. 1947) Employees' Retirement System

Your memo of June 3rd received, directing my attention to the above cited document, which is now Chapter 384 of the Public Laws of 1947. You state that your department has had many questions as to whether or not a teacher currently employed, who has reached the age of 60 or who has served for 30 or more years, must be re-elected and serve after August 13th, the effective date of this Act, in order to receive the retirement benefits of the new law.

In answer I will say that it is my opinion that any teacher who has reached the age of 60 and is eligible for retirement after August 13th, does not necessarily have to be re-elected and serve after August 13th as a teacher.

RALPH W. FARRIS
Attorney General