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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

June 4, 1947

To Lester M. Hart, Col. AGD, Ret., Assistant Adjutant General
Re: State Employees as Members of Military & Naval Reserves

Referring again to your letter of April 11, 1947, in which you state that your office has been informed that an employee of the State of Maine has been ordered to duty as a member of the USNR:

The point in issue deals with his absence as a State employee, and the question is whether he comes under the provisions of Section 80 of Chapter 12, R. S. 1944. You call my attention to the language of the statute, which reads, "military and naval reservists," and you further comment that at the present time Maine has no Naval Reserve; there has been none since World War I, and you state that you desire information as to whether or not the Naval Reservists referred to in the above mentioned paragraph of this section were intended to include members of the Naval Reserve of the United States. You further suggest that the Naval Reserve is wholly under federal control and is not among the forces subject to the orders of the Governor of the State of Maine or any other State.

I have had one of my Assistants trace the history of Section 80, and it is the opinion of this office that officials and employees of the State of Maine who are members of the National Guard or other authorized State military or naval forces or organized Reserves of the United States Army or organized Reserves of the United States Navy are entitled to leave of absence from their respective duties without loss of either pay or time for all days on which they are engaged in organized reserve training duties or authorized training mobilization when ordered or authorized either by the Governor of this State or under the provisions of National Defense Acts.

It is our opinion that the second paragraph of Section 80 of Chapter 12, R. S. 1944, about which you inquire in your letter, applies only in peace time in connection with training duties. Military leave in time of emergency or war, under circumstances whereby the official or employee of the State goes on military leave, so that his employment relationship with the State is terminated for the time being, is an entirely different situation. We opine that the statute referred to applies solely to the situation where an official or employee is ordered to temporary training duties, such as two weeks during the summer months. Under these circumstances his employment with the State does not in fact terminate, and he is entitled to leave of absence without loss of pay or time.

RALPH W. FARRIS
Attorney General

June 6, 1947

To H. A. Ladd, Commissioner of Education

Your memorandum of May 13th to the Attorney General has been referred to me. The subject has reference to the question whether a town may enter into a long-term contract to rent a building to be used for school purposes, the rental to include an amount which would amortize the investment in the building.