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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

July 8, 1947

To E. E. Roderick, Deputy Commissioner of Education

In answer to your inquiry of June 20, 1947, relative to employment of teachers who have reached retirement age or who are beyond that age, and also the cases where a person 70 or over is employed for the first time to teach, due to the shortage of teachers:

In the former case the statute, Chapter 384, P. L. 1947, Section 6, is very plain that retirement is compulsory when the teacher reaches the retirement age of 70, unless at the request of the Governor and with the approval of the Council the trustees permit the teacher to be continued in employment for periods of 1 year.

As to the latter, the same act by Section 3, paragraph 1, provides that after July 1, 1947, membership in the retirement system shall be a condition of employment. A person 70 or over would be ineligible to become a member because of the compulsory retirement provision above cited. I am therefore of the opinion that in these cases employment may only be sanctioned by request of the Governor as in the cases of continuing a teacher in employment after reaching the retirement age.

I would advise that the local superintendent or school committee inform the Department of Education, which in turn will request the Governor that he obtain the approval of the Council for such employment. This appears to be rather cumbersome, but the administration of the retirement system is by the State and until this is modified the only body authorized to act is the executive body.

Since membership is compulsory, the person will have to contribute to the system and at subsequent retirement either have the benefit of the annuity or the return of the contributions plus interest on withdrawal from the service.

ABRAHAM BREITBARD
Deputy Attorney General

July 18, 1947

To Lester E. Brown, Chief Warden, Inland Fisheries and Game

I have gone over the correspondence which you submitted to me, which deals with the application of a student at Bowdoin College for a resident hunting and fishing license. The clerk of the town refused to issue resident licenses to the applicant.

Without going into the details in full, I feel that I should uphold the town clerk, and therefore advise you that the town clerk was justified in refusing resident licenses, in view of the fact that the applicant had applied to be registered as a voter, claiming his domicile to be in Brunswick, and the selectmen, after giving the applicant a hearing and after due consideration, determined that he was not domiciled in the State of Maine and therefore did not establish a domicile in Brunswick. They therefore refused to place his name on the voting list.

Section 58 of Chapter 33, subsection V, defines who shall be eligible for a resident license. This section is as follows:

> "Any citizen of the United States shall be eligible for any resident license required under the provisions of this chapter, providing such person is domiciled in Maine with the intention to reside here, and who has resided in this state during the 3 months next prior to the date an application is filed for any license under the provisions of this chapter."

Merely having a temporary residence here is not enough. The applicant must be domiciled with the intention of permanency of residence, although of uncertain duration. There is no distinction between the domicile under this chapter and domicile to qualify to register as a voter in the State except that the period which must elapse under this chapter is three months.

In view of these facts and the applicable provisions of the act, the clerk properly refused to consider the applicant as a resident of the State eligible for resident licenses.

I return herewith the file which you submitted.

ABRAHAM BREITBARD
Deputy Attorney General

July 22, 1947

To Fred W. Rowell, Director, Division of Veterans' Affairs

Receipt is acknowledged of your memo of June 24th, asking for an interpretation of Chapters 370 and 386, Public Laws of 1947.

Your first question deals with Chapter 370, section 3, which amends section 302 of Chapter 22, R. S. At the same session, by Chapter 386, P. L. 1947, setting up the Division of Veterans' Affairs, the legislature specifically provided for the repeal of section 302 of Chapter 22, Revised Statutes; but whatever may be the effect of the inconsistent action of the legislature, the policy of the legislature, nevertheless, is very plain that they intended to put a statutory limit on the amount of aid to dependent children of veterans, as clearly indicated by the amendment contained in Chapter 370, P. L. 1947. I am of the opinion, therefore, that in determining the amount of aid to be granted to dependent children the limit prescribed by this amendment will have to be followed by you in the administration of Chapter 386, P. L. 1947, which provides that:

> "In determining the amount of aid the division shall use the same budgetary standards as are being used by the department of health and welfare."

The budgetary standards in effect on August 13, 1947, in the Department of Health and Welfare contain limitations on the amount of aid. I believe, therefore, that these limitations must be read into section 13. Consequently, in determining the amount of aid to be allowed to the dependent parents of a veteran, or a dependent wife, consideration must be given to the limitations found in the various provisions dealing with the grant of aid in the Department of Health and Welfare.