

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

August 12, 1947

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

In reply to your memorandum of August 8th, which concerns the right to service retirement benefits of an employee of a participating local district, who, prior to his application for retirement, was discharged for good cause, namely the commission of a crime:

The employee at the time of discharge was 66 years of age, and the question you now ask has arisen because of the provisions of law whereby retirement is optional when the employee attains 65 years of age.

Section 5 of Chapter 60 provides in part:

"Any member in service may retire . . . upon written application to the board of trustees . . . provided that such member at the time so specified for the retirement shall have attained age 65."

It seems clear to me that under this section a person at the time of his application for retirement must be "in service," in order to qualify for the retirement benefits.

Section 1, subsection VII, defining "service," is as follows:

"'Service' shall mean service as an employee for which compensation is paid by the state." (In this case by the participating local district.)

As the applicant was not in the service of the participating local district, but had been discharged from service before any application for retirement was filed, he cannot qualify for a retirement allowance, even though he could have exercised the right before his services were terminated.

I believe that this view is supported by Section 8 of Chapter 60, which provides:

"Should a member cease to be an employee except by death or by retirement under the provisions of this chapter, he shall be paid the amount of his contributions, together with such interest thereon, not less than $\frac{1}{4}$ of accumulated regular interest, as the board of trustees shall allow; . . ."

This applicant ceased to be an employee before retirement and in accordance with the above section is entitled only to the return of his contributions.

ABRAHAM BREITBARD
Deputy Attorney General

August 12, 1947

To E. E. Roderick, Deputy Commissioner of Education
Re: Claim for Refund of Contributions to the Teachers' Retirement Association

I have carefully considered your memo of June 20th with relation to the above matter, and I also have a letter under date of July 12th from Mr. —.

The claim advanced by him is that he began teaching outside the State prior to 1924 and hence, when he began teaching in this State in 1925, he was entitled to the benefits under the non-contributory teachers' pension provisions now contained in Chapter 37, Sections 212-220, as amended, notwithstanding the fact that in September of 1933 he made written application to the Maine Teachers' Retirement Association to become a member of that system and since that time has made the statutory contributions. His alleged claim to a refund of the contributions made by him is based on the fact that he had "no opportunity to make a choice or to ascertain my (his) status;" but since that time a period of fourteen years has elapsed and he has taken no action whatever to correct his status and comes too late at this time, particularly when the motivating fact must be that the legislature at this last session has passed a retirement act which, it is claimed, provides for more favorable benefits, to teachers who can qualify for non-contributory pensions.

Section 241 of Chapter 38, dealing with the Teachers' Retirement System, provides:

"Any teacher in service previous to July 1, 1924 may elect between the provisions of sections 221 to 241, inclusive, and the provisions of sections 212 to 219, inclusive, but shall not in any case be eligible to benefits under both."

Having exercised an election to accept the benefits of the Teachers' Retirement System, he cannot at this time have the benefits of the non-contributory pension statutes. Having made choice, he is bound by that choice. Furthermore, there is no provision in the act which authorizes anyone to refund the contributions made by any member except in accordance with the terms of the act. The only instance where provision is made for withdrawing the contributions with interest is where the member withdraws from the service by resignation or dismissal, or in case of death of such member before he becomes eligible for retirement. I therefore advise you that the refund of the contributions made under the facts above stated cannot be made.

ABRAHAM BREITBARD
Deputy Attorney General

Augusta 19, 1947

To Bureau of Taxation

I desire to amplify my memo of June 18, 1947, relative to the propriety of a service station selling gasoline from a tank under a trade name or symbol of its own, notwithstanding that the gasoline dispensed is that of a well-known refiner or manufacturer which advertises its product under the name and symbol adopted by it.

The question then before me was whether a retail seller who conducted a filling station could adopt a name of his own, using that name and symbol on the tank and selling gasoline that he purchased directly from a manufacturer or distributor. I advised that he could not do so under Section 168 of Chapter 88 of the Revised Statutes of 1944.