

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

January 26, 1948

To Earle R. Hayes, Secretary

I have your memo of January 23rd relating to the definition of "teacher" in Section 1 of the Retirement Law, which includes those teachers in schools which are supported at least 3/5 by State and/or town funds. In the second paragraph of your memo you go on to state that this means in effect that all teachers presently teaching in any academy or other school which is being directly supported at least 3/5 by public moneys are not only eligible for membership in the Retirement System but must become members, since there is no election provided for teachers under the present law. Then you ask this question in your third paragraph, whether or not prior service credit for all teaching service prior to July 1, 1947, shall be credited to these teachers for all years which they have taught in these academies regardless of whether or not, during some of those years, the schools may or may not have been supported 3/5 by public funds.

In answer to your question it is my opinion that the board need not go back and check each year in connection with each school involved, in order to determine whether or not it was being 3/5 supported by public funds. You should base your decision to issue prior service certificates on the present provisions of the Retirement Law as enacted by the last legislature.

In paragraph 4 of your memo you direct my attention to the definition of prior service which is found in the same section of the law, wherein it provides that "prior service" shall mean service rendered prior to the date of establishment of the System, and the date of establishment, so far as teachers are concerned, is fixed under the provisions of Section 2 as being July 1, 1947.

You also call my attention to the fact that under the provisions of Subsection V of Section 4 of the new law, the Board of Trustees "shall issue Prior Service Certificates certifying to each member the length of service rendered prior to the applicable date of establishment. . . ." You further state that this means that the board, in view of the facts that teachers in these schools which are supported 3/5 by public funds are included in the specific definition of "teacher" in Section 1, that the date of the establishment of the System for teachers was fixed as of July 1, 1947; and further that the Board is required to issue prior service certificates to all "teachers," should issue prior service credits for all their teaching service to all the teachers involved.

In answer to your conclusions stated in the last two paragraphs of your memo, it is my opinion that the teachers now come under the Act who are teaching in schools supported 3/5 by public funds and should receive prior service certificates for all their teaching service.

RALPH W. FARRIS
Attorney General

January 28, 1948

To Harrison C. Greenleaf, Commissioner of Institutional Service

Agreeably to your request on the above date, under the provisions of Section 137 of Chapter 23, R. S., which provides that your department may in its discretion investigate the fact that any person may be lawfully liable for

the support of the insane, and may collect said money due the State institutions for board and care, and that all moneys collected under the provisions of this section shall be forthwith turned over to the Treasurer of State, who shall receipt for the same, and that the expenses of the collection of said moneys shall be charged against and paid out of any sums so collected and turned over, I authorize you to employ an attorney for the purpose of investigating such facts relative to liability for the support of the insane inmates of said State institutions and collecting such sums as may be due the State.

All suits against persons liable for the support of inmates of the institutions shall be brought through the Attorney General's office.

Will you please have any attorneys or investigators whom you employ report to this office when money cannot be collected without suit, and proper action will be taken in the courts of this State to recover.

RALPH W. FARRIS
Attorney General

January 30, 1948

To Fred M. Berry, State Auditor

I have your memo of January 29th, stating that the Department of Audit was recently requested to make an audit of the Norway Water District's accounts. In compliance with said request, you are now auditing said books.

You state that a question arises as to whether the auditing of a water district's accounts may be conducted by the Department of Audit, and you cite the law with regard to the annual audit of towns as contained in Section 116 of Chapter 82, as amended by Chapter 361, P. L. 1947.

You further state that it would appear from this statute that it would not be mandatory for a water district to have its accounts audited, even though it performs a municipal function and operates under its own charter. You further state that any quasi-municipal agencies that have requested audits by your department could rightfully do so in that they are agencies of the State.

In answer to your question I wish to state that a water district is not an agency of the government. It is a private corporation performing a public function, supplying drinking water and water for fire protection, and it is not a State agency and has nothing to do with the operation of the government of the municipality where its office and plant may be located.

The section of the statute which you cite does not give you authority to audit the books of a water district.

Section 13 of Chapter 378, P. L. 1945, authorizes a post-audit of the accounts and records of the State Normal Schools and Teachers' Colleges, the Maine Port Authority, the Maine Forestry District, and the Maine Teachers' Retirement System, and that is all.

It must be remembered that districts of this character do not possess police powers properly belonging to municipal police bodies exercising local governmental functions. Although in the nature of public corporations, they are not municipal corporations in the proper sense of that term. In the case of *Kelley vs. Brunswick School District*, 134 Maine 414, the Court said, "Con-