

MAINE STATE LEGISLATURE

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STATE OF MAINE

R E P O R T

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

March 23, 1949

To Fred M. Berry, State Auditor

Re: L.D. 340, A Resolve Transferring moneys from the Employees' Retirement Fund to the General Fund (\$108,000).

I received your memo of March 18th, soliciting my opinion relating to the legal rights of the Employees' Retirement System board to correct errors within the Employees' Retirement Fund, under the provisions of Subsection VIII of Section 12 of Chapter 384, P. L. 1947, from which you quote in part:

"The board of trustees, upon discovery of any error in any record of the system, shall, as far as practicable, correct such record."

Then you cite the errors requiring correction, which are as follows:

"1. The \$108,229.65 which represents overpayments made by the State prior to 1947, and which became a part of the Employees' Retirement Fund by enactment of Chapter 384, Public Laws of 1947.

"2. An amount of \$139,792.07 which represents a deficiency in the 'Teachers' Savings Fund' caused for the most part by lapsing balances and making transfers from the 'Pensions of Retired Teachers' account prior to its merger with the Employees' Retirement System in 1947."

You state that if the board is empowered to make corrections within the fund, a simple journal entry can be made by charging the Pension Accumulation Fund with \$108,000 and crediting the Teachers' Savings Fund with \$108,000. This procedure would eliminate the necessity of enacting L. D. No. 340.

In reply I wish to state that it is my opinion that the provisions of Subsection VIII of Section 12 of Chapter 384, P. L. 1947, are not broad enough for the transfer of funds by the board of trustees. This statute was intended to correct errors in any record of the System, so far as practicable, when an injustice or inequity would result, so that any employee under the Retirement System would not get full credit, or would get no credit at all, because of a defect or error in the record of the System.

In my opinion the board is not empowered under the present statute to make such corrections. To accomplish what you request in your memo you should seek legislation authorizing the board of trustees to make transfers of funds from one fund to the other as suggested in your said memo.

RALPH W. FARRIS
Attorney General

March 24, 1949

To Russell W. Carter, Supervising Accountant-Auditor,
Highway Department

Relative to your memo of March 24th concerning the check heretofore drawn by the State, dated May 16, 1930, on the Augusta Trust Company in favor of Clifford E. Herrick and reputedly cashed by him with Alfred M. Joyce who now claims to be the holder thereof: