

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:

You had this check in your possession this morning and I am informed by you that the check was mislaid either by the holder or by the payee thereof, and hence was not presented within a reasonable time after its date. We have no explanation from the holder or the payee why the loss of the check was not made known to the Controller's office, so that payment thereof could have been stopped and a new one issued.

Under the law a check must be presented within a reasonable time after the date of its issue, and the failure to do so, resulting in loss to the drawer of the check, would discharge the drawer from any further liability. In this case the Augusta Trust Company in 1933 closed because of the bank holiday and thereafter never re-opened, but its affairs were liquidated, resulting in a substantial loss to the State. Under these circumstances the failure of the holder to present his check for a period of nearly three years after the date of its issuance would make him chargeable with its loss, because it was not presented within a reasonable time.

I therefore advise you that the Highway Commission may not request the Controller to issue a warrant in place of this one, and the only recourse that the holder now has is to request the legislature to reimburse him by legislative Resolve.

ABRAHAM BREITBARD
Deputy Attorney General

March 25, 1949

To A. K. Gardner, Commissioner of Agriculture
Re: Milk Prices

I have your memo of March 24th, stating that milk received from local farmers in Maine country plants of Boston milk dealers is frequently sold as Class I milk to local milk dealers, but under the present set-up these producers do not receive the benefit of the local Class I price established by the Milk Control Board. They are paid the uniform blend price established by the Milk Market Administration for the Boston market. The Boston dealer selling the milk from his Maine country plant to the local dealer is charged for this milk at the Boston Class I zone price rate, which is usually about 20c a hundredweight lower than the Class I price established by the Milk Control Board. On these facts you ask whether the Board has authority to enforce its prices for milk sold in local markets when such milk is received at a country plant and subject to the Boston pool under the authority of the Federal Milk Order No. 4, issued under the Agricultural Marketing Agreement Act of 1937. Section 904.4 provides for the determination of pool plant status in the Greater Boston area of holders of certificates of registration issued under the provisions of Chapter 94, Section 16 of the Massachusetts General Laws.

It is my opinion that the State Milk Control Board has authority to enforce its prices for milk sold in open markets when such milk is received at a country plant in intrastate commerce, even though it is subject to the Boston pool which is under the Massachusetts Administrator. This does not affect the authority of the Maine State Milk Control Board, if the Board sees fit to enforce its rights, unless it has entered into an agreement with the