

# 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**

There would be no question about a taxi's being a transportation company, if it was incorporated as a company doing business under the laws of Maine.

It is my opinion that under this decision, with which I am in accord, a taxi driver would be included who holds himself out for hire seeking to render a public service by transporting passengers.

RALPH W. FARRIS  
Attorney General

May 26, 1949

To Earle R. Hayes, Secretary, Employees' Retirement System  
Re: Military Leave

While I was attending court in Houlton you sent to my department a memo relating to military leave cases. . .

You call my attention to the cases of three persons, all of which are more or less similar. One of these persons taught in Maine for a short time, later going to Massachusetts where he taught for a period of years and from that teaching in Massachusetts was inducted into the armed forces of the United States. Upon his release from the armed forces he returned to Maine and resumed his service here as a teacher. The question involved is whether or not the Board should give him credit for his period in the armed forces of the United States in spite of the fact that he entered the armed forces from teaching in Massachusetts rather than in Maine.

It seems to me that he should be given credit for his full period in the armed forces under the full faith and credit clause of the Constitution of the United States. You should not show any discrimination against any citizen of the United States who has served in the armed forces during the war.

The next case about which there seems to be a question is that of Gerald Murch who was employed by the State on July 1, 1933 and entered the armed forces of the United States in December, 1942, at which time he was a member of the Retirement System and was granted military leave in accordance with the provisions of law. He was released to inactive duty on February 8, 1946, but entered private business and did not return to State service until February 1, 1949. You call my attention to the provisions of the Military Leave Law to the effect that a person must return or report for duty within 90 days from his discharge from the armed forces in order to protect his military leave credits.

In my opinion Mr. Murch did not comply with the provisions of the statute just quoted; but in view of the fact that he was an officer and was not discharged in the true sense of the word, but released as a Reserve officer to inactive duty, he would still be eligible to receive the benefits under the provisions of our Military Leave Law, and this in my opinion would protect his military service credit towards retirement.

The third case is that of Mr. George Davala of the Bureau of Accounts and Control who was employed by the State in February, 1942, made his application for membership in the System in July, 1942, and was inducted into the armed forces on August 12, 1942. Technically, you say, he was not entitled to military leave, due to the fact that he was exactly twelve days

short of the required six months set forth in the military section of the law as a prerequisite to the granting of military leave. However, Mr. Davala served in the armed forces until November, 1945, and immediately returned to State employ, in the early part of December, 1945. Your question is whether the Board has any discretion with reference to the determination of granting military leave in a case such as Mr. Davala's, where the statutory limitation of six months was not completed by such a close margin.

In my opinion the Board of Trustees may use its discretion and grant Mr. Davala military leave, as the statute in cases of veterans in regard to administrative procedure should not be strictly construed, but should be given a very liberal construction in favor of the veterans.

RALPH W. FARRIS  
Attorney General

May 26, 1949

To H. S. Weymouth, Engineer, Secondary Highways  
Re: Special Resolves

I have your memo of May 16th, in which you state that a discrepancy has shown up involving Chapter 208, P&SL 1949, the so-called highway allocation bill, and Chapter 183 of the Resolves, the blanket road resolve. You state that under Chapter 208, P&SL, Item C-9, the legislature set up \$175,000 for the fiscal year 1949-50 and \$150,000 for the fiscal year 1950-51 and that this is intended to include the regular resolves of \$150,000 each year plus \$25,000 additional for what are called "General Highway" Resolves. In other words, the money to pay these latter resolves becomes available on July 1, 1949, but the resolves are listed for expenditure in the year beginning July 1, 1950.

In order to interpret the intention of the legislature we must start with the proposition that the appropriation is for the fiscal periods ending June 30, 1950 and June 30, 1951, and that there is a further appropriation of \$25,000 from the General Highway Fund "to pay the towns as specified below," set up for the fiscal year 1949-50 with the figures "1949-50" left out in the appropriation. It is my opinion that it was the intent of the legislature to make this appropriation available for each fiscal period, that is, 1949-50 and 1950-51. The omission was called to my attention by some members of the Committee on Ways and Bridges during the closing hours of the session, when the bill had already been engrossed, and the committee did not want to recall the bill for an amendment of this nature.

In regard to Chapter 208, P&SL 1949, Item C-9, which provides for special Resolves of the legislature to repair and construct highways and bridges, in the amount of \$175,000 for the fiscal year 1949-50 and \$150,000 for 1950-51, in interpreting the provisions of Chapter 183 of the Resolves of 1949 I am keeping in mind the provisions of Chapter 208, P&SL 1949, which further indicates that the dates in the Resolves were an error and that the funds appropriated should be made available for expenditure during the first year of the biennium and the towns can be reimbursed by the State after July 1, 1949.

RALPH W. FARRIS  
Attorney General