

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 30, 1950

Earle R. Hayes, Secretary, Maine State Retirement System
Re: Status of Teachers at Ricker Classical Institute

You are advised that in writing what follows I am not going to attempt to give a conclusive interpretation or so-called ruling, for the reason that I do not find myself in a position to speak with any degree of finality at this time.

It is my understanding that it has been a generally agreed-upon policy to give a liberal construction to the terms of the Employees' Retirement statutes, to the end that the benefits of the System may be available to all persons who come reasonably within the provisions of law. It is with this in mind that I have delayed replying to your memos relative to the Ricker Classical Institute case.

I am inclined to think that Chapter 428 of the Public Laws of 1949 may not include within the System the teachers at the Ricker Classical Institute, in which event, if I am right, the result would be to deny the benefits of the System to those teachers. This inclination is predicated upon the proposition that, as I read your memo and the memo from the Commissioner of Education to you, I infer that that institution has never in fact been supported at any time at least 3/5 by state or town appropriations. If this is the case, then the teachers are not eligible to participate in the system unless they have "heretofore contributed to the Maine Teachers Retirement Association, provided that such contributions have not been withdrawn." I have no information with respect to participation in the Maine Teachers Retirement Association by the teachers at Ricker Classical Institute, nor whether, if they did participate, they have or have not withdrawn their contributions. The alternative provision which would entitle the teachers to membership is a question of fact which possibly can be resolved by reference to your records or those of the Commissioner of Education or those of the Institute itself.

At the present time I am not sufficiently informed as to whether or not all teachers at a given institution were required to participate in the Maine Teachers Retirement Association or whether it was optional among the teachers. I believe that under the Employees' Retirement Law you generally confer eligibility on employees of a unit only if all employees are covered, rather than optional choosers. This would then raise the question whether only those teachers who had contributed to the Retirement Association would be eligible to continue in the Retirement System or whether, some having complied, all presently employed teachers at the Institute would now be covered, and a subsequent question whether all must be covered or whether an option remains.

The giving of a specific answer to the first question raised by you could lead to such ramifications that I consider it unwise to attempt to give a categorical answer.

Although it is not suggested in your memorandum, it seems to me, as I explore the problem, that there must of necessity enter into it some administrative or actuarial problems in arriving at any conclusion which would admit

to the System some few of many employees rather than the entire group. With respect to this I have no way of arriving at a logical conclusion without knowing more about the administrative and actuarial workings of the System.

I notice in the Commissioner's memo the question whether or not by not contributing to the Teachers Retirement Association that fact would constitute the exercising of an election not to become members. Just as an off-hand observation I would say that it would constitute such an election, particularly on reading the last clause of Chapter 428 of the Public Laws of 1949, "provided that such contributions have not been withdrawn," which clause seems to import an intent to permit continued coverage only to those who were in and had not withdrawn their contributions.

To summarize, but not necessarily to express an opinion with finality, the law seems to be that if Ricker Classical Institute has been supported at any time at least 3/5 by state or town appropriations, the teachers presently employed there may be admitted to the System; or if not so supported, if the teachers there formerly contributed to the Maine Teachers Retirement Association (presumably all of them) and have not withdrawn their contributions, then the teachers presently employed there are eligible for membership. The facts are entirely for the determination of the trustees of the Retirement System.

JOHN S. S. FESSENDEN
Deputy Attorney General

March 30, 1950

To Fred M. Berry, State Auditor
Re: Chapter 37, §§ 25 and 78-II

In connection with these sections you have asked,

"Shall all bills or invoices be approved individually by a majority of the members of the School Committee, or would a so-called warrant suffice when a listing of individual invoices by names and amounts is made with bills attached and approved in total by a majority of the members of the School Committee?"

It is assumed that in asking the question you are seeking an advisory opinion with respect to the suggestions, recommendations or advice that you should give to towns when your department has been requested to make an audit of town accounts. It is also assumed that you are not seeking an opinion from this office having the effect of a so-called Attorney General ruling, often misconstrued as regulating that which a town shall or shall not do.

In making suggestions or recommendations to a town, it is our opinion that you should recognize that the two sections of law referred to by you may permit of any number of accounting methods which might well comply with the statute, so that any expression from this office as to any particular method does not preclude the use of some equally statute-complying method.

Section 25 in referring to a "bill of items" certainly contemplates some form of listing bills payable so that the same may be readily scanned and the items avouched as to propriety for payment.