

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

payments are expected to be derived and give reasonable assurance that such sources will be adequate, for such purpose. Whether or not proof of financial responsibility annually is a practicable method of assuring the State agency that such sources will be adequate is an administrative problem. It seems reasonable that the State agency cannot permit a political subdivision, because of an annual financial responsibility proof, to be a member one year, fall out the next year, and be re-admitted the third year, all because of the results of said proof. Perhaps for that reason the answer to Question 3 should be, No. However, paragraph B must be complied with in some manner acceptable to the State agency and with respect to that answer we feel that it is an administrative problem.

Question 4. "If an agreement were to be entered into by the Maine Retirement System and the Portland Housing Authority, which has been operating in Portland, Maine, as a political subdivision of the State, under the provisions of Chapter 260, Public Laws of Maine, approved April 5, 1943 as an emergency act, and the present Authority's powers should cease to exist in accordance with that law, and a new Housing Authority was created by the City of Portland, Maine, in accordance with Maine Public Law H. P. 2089-LD 1561 Chapter 81A—approved 5-7-49, would the agreement entered into now be cancelled and a new agreement be entered into with the new Authority?"

With respect to this question the answer cannot be, Yes, or, No. When the present Authority's powers cease to exist in accordance with Federal and State laws, the then existing contract between the Authority and the State agency would be cancelled. Whether or not a new agreement would be entered into with the new Authority is a question that could be answered only at that time, depending upon whether the new Authority would be then acceptable to the State agency. In great part the answers to Question 4 and Question 2 are the same, Question 4 adding only the question of whether a new agreement would be entered into with the new Authority.

JAMES G. FROST

Assistant Attorney General

November 2, 1951

To Earle R. Hayes, Secretary, Maine State Retirement System

Re: Wardens

Subsections III and IV of Section 6-A of Chapter 384, Public Laws of 1947, provide special retirement benefits of wardens of the Department of Inland Fisheries and Game and to the deputy warden, the captain of the guard, and any guard of the State Prison.

These sections provide that if such person is a member of this (Retirement) system on July 1, 1947 and has creditable service of at least 25 years in that capacity, or in the case of the prison work, in each or all capacities, he may retire at $\frac{1}{2}$ of his average final compensation, provided such retirement is requested by either the member or the Commissioner.

Subsection VI of said section states that in order to obtain the benefits of subsections III, IV and V of this section, the member must have attained the age of 55, must have served 25 years in one of the above capacities, and

anything to the contrary notwithstanding, retirement is compulsory at attained age 60.

These sections place such individuals in a different status from that of the ordinary State employee who would not be eligible for retirement benefits until attained age 60 and would not be required to retire on a compulsory retirement basis until age 70.

You ask if such individuals, wardens of the Department of Inland Fisheries and Game, or guards at the Maine State Prison, who become members of the System subsequent to July 1, 1947, are accorded the same benefits granted by subsections III, IV and VI of Section 6-A, or receive the regular retirement benefits available to all employees under the general provisions of the law.

This question, with respect to actual problems arising out of the above quoted sections of the Retirement Law, is premature by some 20 years. Your question affects a person coming into the service subsequent to July 1, 1947, relative to whom no problems of retirement will arise until he has been in the service for 25 years, or not earlier than 1972.

For this reason we would hesitate to give an opinion on a statute which is susceptible to different meanings. On its face, it would seem discriminatory. We suggest, therefore, that if you question the functioning of these sections as to one who comes into the service subsequently to July 1, 1947, then the problem be presented to one of the forthcoming Legislatures for clarification.

JAMES G. FROST
Assistant Attorney General

November 7, 1951

To Lieut. John deWinter, Director, Traffic Division, State Police
Re: Railroad Crossings — School Buses

We have your memo of November 1, 1951. You state that in several instances school buses must stop because of Chapter 19, Section 37-A, of the Revised Statutes of 1944, at sidings or spur tracks when some of these crossings are not even marked as such with proper railroad warning signs. You then ask, "Could Chapter 19, Section 27A be interpreted so as not to require stopping for railroad tracks where railroad warning signs are not posted?"

Chapter 235, Public Laws, 1951, amending Chapter 19 of the Revised Statutes of 1944, reads in part:

"All school buses when carrying children shall come to a full stop before crossing any railroad track or tracks, such stop to be made at a point not more than 50 feet and not less than 10 feet from the nearest rail; . . ."

This statute requires that a school bus stop before crossing any railroad track or tracks and it does not permit an interpretation requiring that such buses stop only for railroad tracks where railroad warning signs are posted.