

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

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.

It is our opinion that the reasonable intent of such Act is to give children such a safeguard as is present only when the buses stop at all tracks.

JOHN S. S. FESSENDEN
Deputy Attorney General

November 7, 1951

To Philip A. Annas, Associate Deputy Commissioner, Education
Re: Inspection of Private Schools

We have your memo of October 11, 1951, relative to Section 3, paragraph XII of Chapter 37 of the Revised Statutes of 1944 which provides that the Commissioner shall

“cause an inspection to be made and to report to the school committee his findings and recommendations whenever the superintending school committee or the superintendent of schools of any town or any 3 citizens thereof shall petition him to make an inspection of the schools of said town; . . .”

You state that three citizens of the Town of Kittery have petitioned the Commissioner of Education to inspect the schools of Kittery, giving special attention to Traip Academy. You further state that there exists a contract between the Town of Kittery and Traip Academy for the schooling of the secondary school students in that town; that the Town of Kittery receives State aid because of this contract, and that Traip Academy receives direct aid from the State. Traip Academy is under the control of a joint board consisting of the trustees of the academy and the school board members. You then inquire if the Commissioner is required to make the inspection as requested in the petition, in accordance with paragraph XII of Section 3.

In so far as the petition addressed to you requests an inspection to be made of the schools of the Town of Kittery, there is no question, of course, that under the provisions of paragraph XII you have authority to inspect all the public schools of the town. With respect to that part of the petition asking for an inspection of Traip Academy you have authority to make such an inspection: 1) in so far as the other provisions of Section 3 as amended impose upon you a duty as to private schools; 2) in our opinion you have the further authority to inspect the academy in so far as you have supervisory control wherein the academy's activities become quasi-public in their nature in that those activities are: a) operated under a contract; b) operated pursuant to a joint board; c) so far as public school funds of the town are concerned; and, d) so far as the operations involve qualifications for State subsidies. In other words, with respect to anything coming within the scope of the authority granted to you by the legislature to control activities of private schools you may inspect; and with respect to anything coming within the scope of legislative authority granted to you to supervise, control or veto arrangements made by a private school whereby it performs quasi-public functions you will have authority to inspect.

JOHN S. S. FESSENDEN
Deputy Attorney General