

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

February 20, 1952

To Ermo H. Scott, Deputy Commissioner of Education
Re: Licenses of Returning Veterans

You ask if it would be possible, administratively, to set up a policy with respect to teachers entering the military service whereby, when they return, they would be guaranteed by the certification division one year of licensing in which they may be able to meet the mandatory six-hour requirement as set out in Section 201 of Chapter 37 of the Revised Statutes of 1944, as amended.

That part of Section 201, with which we are confronted reads as follows:
"Provided further, that the renewal of each teaching certificate shall be conditional on the completion of at least 6 semester hours of professional study within each period of 5 years.

You suggest further that in instances where the teacher would have remaining certificate time which had not been used in active teaching previous to the terminal date of the document these veterans be assured that upon their return you could revalidate their certificates to the extent of time that had not been used, to cover their employment prior to their induction into military service.

The legislature of the State of Maine, being in sympathy with the Federal law which grants re-employment rights to veterans returning to private employment and Federal employment, has enacted Section 23 of Chapter 59 of the Revised Statutes of 1944, amended in 1951 to include Korean veterans, which statute provides that employees of the State, county, municipality, township or school district shall have re-employment rights. This section further provides that the veteran shall not be deemed or held to have thereby resigned from or abandoned his employment, nor shall he be removed therefrom during the period of his service.

Section 158 of Chapter 37 of the Revised Statutes provides that persons not holding State certificates shall not be employed to teach in any school under the supervision and control of any school board of any city, town or plantation in this State. If the teaching certificate of one who has entered into the service has expired before his return to a civilian status, such expiration would result in his not being qualified as a teacher in any of the above mentioned schools. We feel that in the presence of Section 23 of Chapter 59 such a result is not contemplated and that in compliance with Section 23 the length of service of the veteran should not be included in the 5-year period set forth in Section 201 of Chapter 37. It is therefore our opinion that the policies which you mention in your memo are altogether proper and defensible from a legal standpoint.

JAMES G. FROST
Assistant Attorney General

February 21, 1952

To Roland H. Cobb, Commissioner of Inland Fisheries and Game
Re: Fines Collected under Section 125 of Chapter 33, R. S. 1944

You request an opinion as to whether or not fines collected under section

125 should be paid to the Treasurer of State and credited to the Department of Inland Fisheries and Game.

Section 125 provides that whoever, *while on a hunting trip*, or in pursuit of wild game or game birds, negligently or carelessly shoots and wounds or kills any human being, shall be punished by a fine of not more than \$1000 or by imprisonment for not more than 10 years.

Section 110 provides that all fees, fines and penalties recovered under any provision of this chapter, and money received or collected shall be paid to the Treasurer of State and credited to the Department of Inland Fisheries and Game for certain functions of that department. The obvious intent of section 110 is clearly stated in the above sentence. Therefore the fines collected from one who violates the provisions of section 125 shall be handled as provided for in section 110.

It is to be noted that this penalty is to go to the Treasurer of State and be credited to the Department of Inland Fisheries and Game only if the accident happens while on a hunting trip. If the person is not prosecuted under an indictment clearly showing a violation of section 125, that is, while on a hunting trip, then we feel that the money should not be credited to your department.

JAMES G. FROST
Assistant Attorney General

February 21, 1952

To Donald F. Ellis, Secretary, Board of Registration in Optometry
Re: Incorporation

. . . You state that the Social Security Act exempts optometrists and others in certain self-employed fields from being included under the Act so far as their own benefits are concerned. You then ask if it is possible for an optometrist to incorporate his own practice and have the corporation pay him a salary or profit, so that he will come within the Social Security Act.

The Social Security Act is a Federal law and we believe that the Federal Security Agency, through its Social Security Board, would have the right to determine who are eligible or ineligible to participate in the benefits extended through the Social Security Act. If they excluded optometrists, we feel that that is the final answer.

With respect to our Maine laws and the common law, which is held to apply in the State of Maine, while the corporation is in some sense a person and for many purposes is so considered, yet with respect to the learned professions, which can be practised only by persons who have received licenses after having submitted to examination to display their knowledge of their subjects, it is recognized that a corporation cannot be licensed to practise such a profession.

“For example, there is no judicial dissent from the proposition that a corporation cannot lawfully engage in the practice of law.”

13 Am. Jur., page 838.