

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

in violation of the laws be restored without loss of pay or seniority, and in all equity it can only be said that in such an instance the person be reimbursed from the department funds for that purpose.

JAMES G. FROST
Deputy Attorney General

December 3, 1952

To Honorable Frederick G. Payne, Governor of Maine
Re: Maine Maritime Academy – Request for Temporary Loan from Contingent Fund

By virtue of Chapter 24 of the Private and Special Laws of 1947, the Maine Maritime Academy was declared to be a public agency of the State of Maine for the purposes for which it was established.

We are of the opinion that the Maine Maritime Academy is such a public agency as can make a request upon the Contingent Fund, and if, in the opinion of the Governor and Council, the request is a necessary expense within the provisions of the law setting up the Contingent Fund, then such a transfer would be legal.

JAMES G. FROST
Deputy Attorney General

December 29, 1952

To William O. Bailey, Deputy Commissioner of Education
Re: Reimbursement to Towns for Architects' Fees

The following question has been submitted to us for our consideration and answer:

“Under what conditions, if any, is it legal for us to reimburse towns for architectural plans when such projects are financed by the Maine School Building Authority, and title is held by the Authority until the debt is amortized?”

The right to reimburse towns for architectural plans is given to your department by section 195 of Chapter 37 of the Revised Statutes of 1944, as amended. The law sets up a permanent school fund, and the interest therefrom shall be allocated to towns by the commissioner of education for the purpose of surveying school systems and developing school plans. The allocation shall not in any case exceed one-half of the cost of such survey or plans.

The problem here may arise from a misunderstanding of the true nature of the above-mentioned Authority and its relations with the towns. The Authority is merely a financing agency, and its legal relationship with the various towns is determined by a so-called lease. Under this arrangement the Authority holds legal title; the town pays rent; when the entire obligation is liquidated, the Authority must convey the property to the lessee town.

Is the lease a real lease? Our Law Court has spoken on this subject in passing upon a similar lease, designed to carry out the very purpose for which

the Authority was created. See Opinion of the Justices, 146 Maine 183 (188):

“The so-called lease is not in legal effect a lease, *it is a contract of purchase*. The so-called rental is not true rental, to wit, payment for the use of property. The total amount of so-called rental is the purchase price. . . for the property.”

If, then, this Authority does not hold the property to make a true profit from its rentals, as a landlord would do, it is merely a vehicle for financing new schools and the primary obligation, first, last and always, rests upon the lessee town. Is there, then, any reason to discriminate between towns which use this financial procedure and towns which do not? We perceive none. The intention of the legislature was to assist *all* the towns to plan new school buildings. It has placed no specific restrictions upon the distribution of this fund. We see no reason to place any restrictions upon the fund by legal interpretation.

The argument has been raised that in the lease agreements the Authority agrees to pay for the architectural plans for each project. This is true; but once again we can trace the primary obligation to the town itself, with the added fact that the town, not the Authority, has hired, and does in fact control, the architect.

ROGER A. PUTNAM

Assistant Attorney General

December 29, 1952

To Earle R. Hayes, Secretary, Maine State Retirement System
Re: Albert A. Parent

. . . You request an opinion as to the eligibility of Albert A. Parent to receive retirement benefits under the provisions of laws pertaining to the Maine State Retirement System. In connection with this matter our office has received a letter from Frank M. Coffin, Esq., Corporation Counsel for the City of Lewiston, from which we gather that Mr. Parent, as a result of a conviction of embezzlement, which embezzlement took place while Mr. Parent was in office, was found guilty of misconduct by his employer, after notice of hearing and opportunity to appear, and is now the “former controller of the City of Lewiston”. . .

The question before us is, then: “Is a person who has been discharged from employment by a participating local district because of the commission of a crime, prior to application for retirement, eligible to receive service retirement benefits?”

In our opinion the answer is, No.

Section 6-A, par. I, sub-par. A, and Section 9 are those sections determinative of the problem at hand. Section 6-A reads in part:

“Any member in service may retire . . . upon written application to the board of trustees . . . provided that such member at the time so specified for his retirement shall have attained age 60 . . .”

“Service” is defined by Section I of Chapter 60 as follows: