STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1951 - 1954

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:

" 'Service' shall mean service as an employee, as defined in this section, for which compensation was paid."

Under the above quoted provision of the law it is apparent that in order to qualify for retirement benefits the applicant must be "in service" at the time application for retirement is made.

In the present case the applicant was not in the service of the participating district at the time the application was filed, but had been discharged from the service. He cannot, therefore, qualify for a retirement allowance.

Section 9 of Chapter 60, supporting the view taken above, provides that if a member ceases to be an employee except by death or retirement he shall be paid the amount of his contributions, together with such interest thereon, not less than ¾ of accumulated regular interest, as the Board of Trustees shall allow.

JAMES G. FROST
Deputy Attorney General

December 31, 1952

To Edward L. McMonagle, Department of Education
Re: Schooling of Indian Children in Indian Township

You have inquired whether the State Commissioner of Education acting under Chapter 37, Sections 142 through 146, R. S. 1944, may provide for elementary or secondary school privileges for Indian children living in Indian Township, Washington County, and, further, whether expenditures made by him for any such purposes may be included in computing the statement of school expenditures for Indian Township as required by Section 148, Chapter 37, as amended by Section 3, Chapter 260, P. L. 1951.

These questions arise because the above mentioned sections providing for school privileges in unorganized territories on their face appear to include such Indian children. Such a construction appears to conflict with Section 364 of Chapter 22, R. S. 1944, as amended, which provides that the Department of Health and Welfare shall provide certain school privileges for "the children of the Passamaquoddy tribe living on the reservations".

It is elementary in statutory construction that the fundamental rule is to ascertain legislative intent. *Smith v. Chase*, 71 Me. 165. Statute *in pari materia* must be considered. The whole body of previous and contemporary legislation is to be studied together for the purpose of harmonious construction. *Cummings v. Everett*, 82 Me. 263. It is presumed that some progress along the lines of establishing policy and principle is intended. *Haggett v. Hurley*, 91 Me. 547.

The evolution of school privileges for Passamaquoddy Indian children in Indian Township may be traced by reference to prior legislative enactments. By Chapter 140 of the Resolves of 1865, we find that it is, "Resolved that there be paid . . . to the superintending school committee of Princeton and Perry, $150 to be expended by them, for the purpose of maintaining among the Passamaquoddy Indians a school or schools for their education. . ." For the period 1865 through 1879 further appropriations were made to the superin-