

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

“‘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 $\frac{3}{4}$ 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-

tending school committees of these towns for Indian education. By Chapter 186, Resolves of 1880, the legislature appropriated \$400 to be expended under the supervision of the agent of the Passamaquoddy tribes, and the resident priest, for educational purposes. For each subsequent year, until the formation of the Department of Health and Welfare in 1931, we find private resolves appropriating funds for educational purposes for the Indian tribes at Pleasant Point and at Peter Dana Point. In 1921, (see Chap. 176, P. L. 1921) the Indian schools were placed under the care and supervision of the superintendent of schools of the Towns of Princeton and Perry, however, the funds to operate the schools were still appropriated by annual resolve to be expended by the Indian agent.

By Chap. 27, P. L. 1919, the legislature provided for and placed under the State Department of Education, elementary and secondary school privileges for children in unorganized territory. The legislature appropriated funds to the Department of Education for such expenditures. As noted above, however, each legislature still appropriated separate funds by private resolve for Indian schools. It would appear from this that it was not understood that Chap. 27 of P. L. 1919 was to apply to Indian children living on the reservations.

This surmise is buttressed by reference to P. L. 1927, Chapter 56, which provided that Indian children of secondary school age should receive free tuition while attending outside high schools as did other children in unorganized territory. Such a statute would not have been necessary had Chap. 27, P. L. 1919, been applicable to such Indian children. This move by the legislature apparently reflected a change in attitude by state officials in regard to Indian education. It was at this time that the Governor and Council by Council Order of August 11, 1928, authorized the Department of Education to construct an elementary school in Indian Township, as follows:

“The Commissioner of Education be authorized to advertise for bids for a single teacher school for Indian Township located near Princeton. This comes under the work of *Schools in Unorganized Townships*, bids to be submitted to the Governor and Council before contract is awarded.”

Pursuant to this authority the Department of Education constructed the elementary school building in Indian Township near Princeton and operated it for Indian children until 1943. At that time this school was closed and the children transported to the Indian school at Peter Dana Point.

In 1933, the State revised its program for free tuition for secondary schooling of children in unorganized territories, and the Department of Health and Welfare was required to pay the tuition for Indian children entitled to secondary education. See P. L. 1933, Chap. 146. This practice continues until this day.

Section 364 of Chap. 22, Revised Statutes, as amended by Section 43, Chap. 349, P. L. 1949, provides a comprehensive plan for the education of children of the Passamaquoddy tribe living on the reservations. It might be argued that this statute is not applicable to Indian children living in Indian Township near Princeton and that such children come under Sec. 143, Chap. 37. We think such a construction to be inconsistent with overall legislative policy. It would also be inconsistent with that part of Section 364 of Chap. 22, as amended, which provides that the Department of Health and Welfare shall pay the tuition for Indian children who attend elementary or secondary

schools in any city or town. It must be taken as unquestioned that the Indian children living in Indian Township near Princeton are on the Reservation. This office by opinion of July 19, 1948, said:

"I have checked the Indian Treaties, and I find that in the Maine Resolves of 1843, on page 264, a treaty agreement was signed by a committee appointed by the General Court of the Commonwealth of Massachusetts to treat with and assign lands to the Passamaquoddy Tribe and others connected with them; and in that Treaty they set off Township No. 2 in the First Range surveyed by Mr. Samuel Titcomb in 1794, containing about 23,000 acres more or less, which in my opinion would make this territory a part of the tribal reservation of the Passamaquoddy Tribe."

We think that these considerations can lead to only one conclusion. That is that the legislature has and now does follow a policy of providing for separate education facilities for Indian children living on the Reservations of elementary and secondary school age. This policy appears to have been deviated from in 1928, but to be again reinstated in 1933 and by legislation thereafter to date. These separate facilities are now administered by the Department of Health and Welfare. We conclude that the Department of Education is without authority to expend funds to provide educational privileges for Indian children living in Indian Township.

To more specifically answer your questions,

- 1 a. The Department of Education may not operate a school for Indian children in Indian Township, the operation of such school being the duty of the Department of Health and Welfare.
- b. The Department of Education may not purchase tuition privileges for such Indian children. (See Sec. 364 of Chap. 22, as amended by Chap. 349, Sec. 43, P. L. 1949.)
- c. The Department of Education may not provide transportation for Indian children in Indian Township to a school operated at Peter Dana Point by the Department of Health and Welfare. Transportation is such an essential part of education facilities today that the providing of transportation to Indian children in Indian Township to the Peter Dana Point school is within the jurisdiction of the Department of Health and Welfare.

In answer to the second question, it must follow that since the Department of Education is without authority to expend funds for Indian children in Indian Township any expenditures made by the Department should not be included in the computation of the statement of school expenditures for the assessment of a school tax on whites living in Indian Township.

MILES P. FRYE
Assistant Attorney General

January 5, 1953

To Honorable Burton M. Cross, Governor of Maine
Re: Power of Governor respecting Chairman of Liquor Commission

You have inquired whether you may revoke the appointment of the Chairman of the Maine Liquor Commission and appoint someone else as Chair-