

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

for the calendar years  
**1951 - 1954**

The first paragraph of leases should indicate the agreement between the lessor and the State of Maine, through the Purchasing Agent, Bureau of Purchases.

Leases of real property should be executed under seal.

JAMES G. FROST  
Deputy Attorney General

March 2, 1953

To Herbert G. Espy, Commissioner of Education  
Re: Exclusion from School

This office is in receipt of your memo of February 19, 1953, requesting interpretation of section 83 of Chapter 37, R. S. 1944:

“. . . and provided further, that the superintending school committee may exclude from the public schools any child whose physical or mental condition makes it inexpedient for him to attend. . . .”

You ask: “(1) Might ‘physical or mental condition’ be interpreted to include habitual behavior which disrupts work of the classroom and which prevents the teacher and other pupils from carrying on their proper activities?”

“(2) What would be considered sufficient evidence to warrant the superintending school committee excluding such a child from school?”

In answer to Question No. 1, we might say that our interpretation of the above quoted provision of section 83 does not extend to the exclusion of children because of habitual behavior, but rather we would believe that section 59, subsection V would be more appropriate. This section reads as follows:

“Superintending school committees shall perform the following duties: . . .

“V. Expel any obstinately disobedient and disorderly scholar, after a proper investigation of his behavior, if found necessary for the peace and usefulness of the school; and restore him on satisfactory evidence of his repentance and amendment.”

It is the intent of section 83 of Chapter 37 to make it compulsory, with certain exceptions, for children of certain ages to attend school. There are times when for one reason or another, when, for instance, children are bearers of contagious diseases or display a condition of filth, they should of necessity be excluded from school. We believe that the section first above quoted is intended to mean that it will not be compulsory for children having particular physical or mental qualities to attend school, if it is inexpedient for them to do so, and that the superintending school committee may in such conditions exclude such children.

However, with respect to disorderly or disobedient children, we believe that subsection V of section 59 is more appropriate, if it is inexpedient *for the school* to have them attend.

In answer to Question No. 2, we refer you to an opinion written by Ralph Farris, then Attorney General, on June 21, 1946, which opinion, along

with one written by Frank I. Cowan, Attorney General, on May 13, 1941, should in a general way answer your question with respect to the amount of evidence necessary to warrant committees in expelling a child from school.

Each instance where a child is expelled from school will contain its own factual situation, which must be examined to ascertain whether or not there has been sufficient evidence to warrant the action of the superintending school committee.

JAMES G. FROST  
Deputy Attorney General

March 2, 1953

To Earle R. Hayes, Secretary, Maine State Retirement System  
Re: Military Leave

You have asked this office for an interpretation of section 3 of Chapter 60 and section 23 of Chapter 59, both of the Revised Statutes, in so far as they affect the manner in which your Retirement System handles credits for military service.

Subsection VI of section 3 of Chapter 60 of the Revised Statutes of 1944, as amended, provides:

“. . . the membership of any employee in such classes of military or naval service . . . shall be considered to be continued during such military or naval service if he does not withdraw his contributions . . .” (and such person) “shall have all the benefits of section 23 of chapter 59.”

Section 23 of Chapter 59 of the Revised Statutes of 1944 provides that any employee regularly employed for at least 6 months by the state, county or municipality within the state, who has attained permanent status and who enters the military service shall not be deemed to have thereby resigned or abandoned his employment.

With respect to these statutes you ask: “Does the six-months limitation in effect provided for in the Personnel Law with respect to military leave and credits have any bearing upon the action the Retirement System should take in such cases with respect to maintaining retirement credits for employees who enter the Armed Forces?”

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 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.

A careful reading of both sections shows the legislative intent to be rather clearly defined. In effect, subsection VI of section 3 states that a member of the System entering military service shall have all the benefits of section 23 of Chapter 59.

What are the benefits of section 23 of Chapter 59? As stated above, this section provides that an employee in permanent status who enters the military service shall not be deemed to have thereby resigned or abandoned his employment. The second paragraph of said section states: