

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

for the calendar years  
**1951 - 1954**

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:

“Such employee shall be considered as on leave of absence without pay, and for the purpose of computing time in regard to pension rights and seniority, shall be considered during the period of his federal service as in the service of the governmental agency by which he was employed at the time of his entry into such federal service.”

These two statutes clearly deal with one and the same problem: section 23 of Chapter 59 has reference to employees having a permanent status and their rights, pensions, seniority, etc., when they enter military service; section 3 of Chapter 60 deals with the same problem and states that he (the employee) shall receive the benefits of section 23 of Chapter 59. If we read these statutes and apply the doctrine of *pari materia*, presuming that all statutes relating to the same subject matter were enacted in accord with the same general legislative policy and that together they constitute a harmonious or uniform system of law, it follows of necessity that the six-months limitation provided for in section 23 of Chapter 59 has a definite bearing on the action your System should take with respect to maintaining retirement credits for employees who enter the Armed Forces.

Section 23 of Chapter 59 provides that under certain conditions, employees who enter the Armed Forces are entitled to restoration to a particular position or one of like seniority upon discharge from the Armed Services. Section 3 of Chapter 60 puts a further limitation on such restoration, in that he may not, while in service, withdraw his contributions.

It would be a paradox to state that, while a person might be a member of the Retirement System, he would yet not be entitled to employment with the State. This would in effect be vitiating the first paragraph of section 3 of Chapter 60, which makes it mandatory that an employee be a member of the Retirement System.

JAMES G. FROST  
Deputy Attorney General

March 2, 1953

To Morris P. Cates, Deputy Commissioner of Education  
Re: Lincoln Academy

You state in a memo to us dated February 24, 1953, that a group of taxpayers in the town of Newcastle desire to appropriate at their next town meeting money to be given to Lincoln Academy to assist in its new school housing construction program. You note that Lincoln Academy has been serving secondary students of Newcastle for 152 years without a contract and you ask, “Is there any other section or sections of the Statutes (than section 90 of Chapter 80) which would make such desired appropriation legal?”

The powers of a town are contained generally in Chapter 80 of the Revised Statutes, and a town has no power except that which is expressly granted by statute or that which by necessity is implied in powers granted. Section 90 in effect provides that towns may raise the necessary money for the support of schools. This word “schools” has reference to public schools. There is further authority for the repairing and construction of buildings of academies, seminaries or institutes with which the town has a contract, as provided in section 96 of Chapter 37.