

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

"Section 26, in part, states: *'Except as provided in this chapter, any or all supplies, materials, and equipment needed by one or more departments or agencies shall be directly purchased or contracted for by the state purchasing agent, as may be determined from time to time by rules adopted pursuant to this chapter, which rules the department of finance is authorized and empowered to make, it being the intent and purpose of this statute that the state purchasing agent shall purchase collectively all supplies for the state or for any department or agency thereof in the manner that will best secure the greatest possible economy consistent with the grade or quality of supplies best adapted for the purpose for which they are needed.'*

"Section 41, II, further states that the state purchasing agent, with the approval of the commissioner of finance, may adopt, modify, or abrogate rules and regulations prescribing the manner in which the supplies, materials, and equipment shall be purchased, delivered, sorted, and distributed."

You have asked this office the following question: "Can the Bureau of Purchases, in purchasing in the best interest of the state, group items required by the several institutions into one item of identical nature without violating the intent of Section 37?"

The answer to your question is in the negative.

Section 36, which provides for collective purchasing of supplies for any department or agency, clearly contemplates that there may be exceptions to such method of purchasing as indicated by the clause above underlined. Section 37, which immediately follows, appears to be one of the exceptions contemplated, and without doubt is a procedure obviously different than the intent expressed in Section 36. However, such difference appears to be the express wish of the Legislature.

This section relating to the purchase of supplies for institutions was enacted by Chapter 124, P. L. 1933, two years after the enactment of the Administrative Code, and is still present some fifteen years after the Department of Institutional Service was established. (Chapter 223, P. L. 1939.)

It is presumed that the procedure outlined in Section 37 has been followed for these twenty-one years and this office could not render an opinion vitiating the clear intent of each statute.

The change should come through proper legislation.

JAMES G. FROST
Deputy Attorney General

February 12, 1954

To Harold J. Dyer, Director, Park Commission
Re: Descriptive Literature

We have your memo of January 25, 1954, in which you state that there has been a need for descriptive literature available to various State parks to provide visitors with information as to the area, its features and facilities. In view of the fact that such material, while informative, is an advertising and promotional medium, you ask if your department can expend money for

such material, in view of the duties of the Maine Development Commission as provided by Chapter 35, Section 2, R. S. 1944.

We have before us a 16-page pamphlet published by the Maine Development Commission, which contains information relative to all State parks. You did not so state, but apparently this publication is too expensive to distribute in the amounts you need to use and perhaps, too, it does not suit your purposes, in that you desire smaller publications for each park area.

This office has conferred with Mr. Greaton, Director of the Maine Development Commission, and it is the consensus that publication by your department of pamphlets of a relatively small size describing particular parks would not be an infringement of the duties of the Development Commission. We are also of the opinion that it would be a proper expenditure of your funds to have such descriptive literature available.

JAMES G. FROST
Deputy Attorney General

February 16, 1954

To Earle R. Hayes, Secretary, Maine State Retirement System
Re: Re-employment after Withdrawal of Contributions

This is in response to your memo of recent date, attached to which is an opinion of Barnett I. Shur, Corporation Counsel of the City of Portland, . . . relating to restoration of prior service in the case of one Edward Nelson.

From the facts supplied it appears that Mr. Nelson left the employ of the City of Portland in February of 1946, at which time he withdrew his contributions in the Retirement System, such withdrawal terminating his membership in the System. In March of 1948 he returned to employment with the City of Portland. The problem is whether or not he shall be credited with prior service.

The statutes to be considered in determining this question read as follows:

Sec. 1, Chap. 50, P. L. 1943. “. . . Provided further that any person formerly employed by the state at any time during the period of 3 years prior to July 1, 1942 and who is re-employed by the state at any time prior to July 1, 1945, shall, upon becoming a member, be allowed prior service credit.”

And Section 227-D, paragraph VI, of Chapter 328, Public Laws of 1943 (Special Session, 1942):

“When membership ceases a prior service certificate shall become void, and should the employee again become a member he shall enter the system as a member not entitled to prior service credit.”

As you noted in your memo, Portland is still operating under the original provisions of the Retirement Act, so we need not concern ourselves with subsequent amendments.

The first section of law above quoted is too clearly worded to be in need of further interpretation and, it being the law with respect to the City of