

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

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

Portland's participation in the Retirement System, we would concur with Mr. Shur's conclusion that Mr. Nelson's prior service cannot be restored under the provisions of their Act.

JAMES GLYNN FROST
Deputy Attorney General

March 1, 1954

To Phillip Annas, Associate Deputy, Education
Re: Responsibility of Commissioner for Tuition Charges

. . . You ask if the Town of Masardis is responsible for the tuition of one Natalie Cote who attended Lee Academy in 1951-52. You state that if the Town of Masardis is responsible for such tuition, then the Commissioner of Education can act in accordance with Section 99 of Chapter 37, R. S. 1944, and pay the amount owed to Lee Academy, deducting that amount plus interest from the apportioned fund of the Town of Masardis:

"Provided, however, that when pupils are sent from one city, town or plantation to an approved secondary school in another, if any accounts for tuition of such pupils are not paid on or before the 1st day of September of that year, the commissioner shall pay such accounts, or so much thereof as he shall find to be rightly due, to the treasurer of the receiving city, town, plantation, academy, institute or seminary at the next regular annual apportionment, together with interest on such accounts at the rate of 6% annually, computed from said 1st day of September, and the commissioner shall charge any such payment against the apportioned fund of the sending city, town or plantation."

There are too many unanswered questions in the fact situation as presented for us even to attempt to answer your problem. For instance: Is Masardis a town which does not maintain a free high school? If it is, does it contract with another town to educate its children? In the event it is such a town and has a contract with another town to educate its children (and we presume that such a contract would not exist between the towns in question — almost 100 miles apart), then the Town of Masardis would in all probability not be liable for the tuition owed to Lee Academy.

Or again, perhaps the child entered Lee Academy under the belief that such entrance was authorized by Section 98 of Chapter 37. This section contemplates that the youth concerned must reside with a parent or guardian in the town involved. We cannot ascertain from your memo whether or not such requirement has been complied with, except that we know she did not reside with her parents.

In any event, the above quoted section of law relating to the duty of the Commissioner to pay such accounts as are in dispute here, has reference to children *sent* by a town to another town (see underlines above) and in our opinion has no relation to instances where children are *sent* by others than a consenting town.

From the manner in which you present your problem we gather that you consider the final determination of residence to be the answer, and such