

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

5. You next mention a deal by Alban Tractor Co. with Nello Teer Contracting Co. If I understand the statement of facts correctly, Nello Teer took over the equipment on a lease on September 23, 1953. If this lease were an installment purchase lease, something the facts do not clearly show, there would be no tax when the equipment was brought into Maine on June 22, 1954.

Caution. Other facts can be brought out which would change the above result as tentatively reached. For instance, it is very important, and the original memorandum says nothing about it, whether the lessor-vendor sends an operator or serviceman along with the machine. In the State of Rhode Island, if an operator is sent, the transaction is deemed a purchasing of a service and not a sale.

It also seems to me material whether the price charged for rental is a reasonable one as rental. If a lessee pays considerably more than fair rental value, we may well succeed in establishing that he has a purchase in mind. I would honestly recommend that instead of basing final assessment upon this memorandum we inquire of the construction companies concerned what is their side of the case.

BOYD L. BAILEY
Assistant Attorney General

November 30, 1954

To Earle R. Hayes, Secretary, Maine State Retirement System

Re: Military Leave

We have yours of November 24th relating to whether or not any employee of the State, including teachers, who may be inducted, drafted or enlisted in the Armed Forces of the United States under the provisions of the Universal Military Training and Service Act is entitled to military leave and whether the State is liable to make contributions for these individuals during their period of service.

This question we answer in the affirmative.

Under the provisions of subsection VI of Section 3 of this Act there is a provision that if anyone is enlisted, inducted or drafted into the Armed Forces of the United States, either in time of war or while the provisions of the Selective Service Act of 1948 or any amendment or extension thereof are in effect, that person shall be considered an employee and the State *shall* contribute to the System such amounts as the employee would have been required to contribute if he had been serving the State during his service in the Armed Forces.

ROGER A. PUTNAM
Assistant Attorney General

December 3, 1954

To Dr. Lillian Brush, Secretary, Board of Examiners of Psychologists

Your letter of December 1st, propounding four questions, has been received.

In answer to 1,a): Any public officer carrying on a governmental function is protected from civil suit by the immunity of the State, provided always

that his actions are consistent with the duty which is placed upon him, and he does not misuse his office. This is common law, which would answer question 1,b), so you cannot find it in the statutes.

In answer to question 1,c): I do not think it is necessary for the Board to take any action relating to protection from civil suit, because such a statute would be nothing more than a statement of the common law. In answer to the second question found in 1,c): It is not too late to bring legislation before the 97th Legislature. As a matter of fact, it would be premature until the legislature convenes on the first Wednesday of January. I do not think the Board has a single thing to worry about if it performs its functions in a diligent manner. Legislation would not, to my personal feeling, be necessary. Other boards and commissions do not find it necessary to have such legislation.

Relative to question 2 and "resident", I think that without a definition in the Act of what a resident is, we shall have to take the term in its usual meaning: a person living in this State with the intention of residing here, in other words making his home here, living here, practising law or carrying on his profession, whatever it may be. Give the term its normal everyday meaning. Owning property alone would not be sufficient. If a person is a resident in this State, he will undoubtedly be a registered voter. That is one of the tests that you may apply.

In answer to question 3: This question is for you to answer, being purely administrative. I would advise that you advertise in such a manner as to give appropriate notice to any interested psychologist that the examination will be held at such and such a date in such and such a place.

In answer to question 4: Without affirmative statutory power, it is not within the power of the Board to bestow an honorary certificate on any person. . .

ROGER A. PUTNAM
Assistant Attorney General

December 8, 1954

To Earle R. Hayes, Secretary, Maine State Retirement System
Re: Statutory Increases in Teachers' Pensions, Chapter 428, P.L. 1953

. . . You ask if the increases authorized by Chapter 428 of the Public Laws of 1953 are available to teachers of the "1913" group, so called, who have heretofore retired as well as to those who hereafter retire.

We would draw your attention to Section 6 of that chapter, which reads as follows:

"Sec. 6. Application. The increase in pensions hereinbefore authorized shall apply to all teachers who have heretofore or shall hereafter retire under the provisions of sections 1, 2 and 3."

The intent of Section 6 is clear and not subject to any interpretation other than that the increases are available to teachers who have heretofore retired under the provisions of Sections 1, 2 and 4 and to teachers who shall hereafter retire under such sections.

JAMES GLYNN FROST
Deputy Attorney General