

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

STATE OF MAINE



REPORT  
OF THE  
ATTORNEY GENERAL

for the calendar years  
1955 - 1956

You ask specifically if the additional penalty of suspension of license is subject to appeal the same as the original sentence. With respect to this question we believe you ask if the suspension of the license is vacated as is the penalty in the usual case of a municipal court when appeal is taken.

While this office does not customarily give opinions to any but those persons included under our statutes, we should be pleased to give you the reaction of this office to the question in hand because of our past deliberations on this same matter.

While there is some dissent in this office to the proposition that such suspension is a penalty and is vacated on appeal, it is the general opinion that such is true, that in effect the suspension of the license amounts to a penalty imposed by the municipal court and as such is vacated when the accused appeals from the decision or sentence of the lower court. It has certainly been the opinion of the Secretary of State, because in every such case the license is returned forthwith to the operator when he has appealed from the decision of the trial court.

We think it wise that the imposition of the penalties be as uniform as possible throughout the State and that what appears to be customary practice should be adhered to when possible.

This office has advised the State Police that it would be proper for them to consider such suspension as an additional penalty.

JAMES GLYNN FROST  
Deputy Attorney General

February 7, 1955

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

Re: Eligibility of Certain Former Teachers

We have your memo *re* retirement of school teachers, which reads as follows:

"Some little time ago you sat in on a conference with the Board of Trustees of the Retirement System with respect to several cases of the older group of teachers who have not taught for several years, have attained age 60 or more but never did complete the so-called minimum of 25 years of creditable teaching service in the schools of Maine which automatically provides a teacher in that particular category with a guaranteed minimum retirement benefit at attained age 60.

"The question of whether or not these individuals are now eligible to apply for and receive retirement benefits was the major question discussed, as you will recall, and it was all discussed in the light of the fact that the words 'in service' had been deleted from the law.

"I am wondering if you have arrived at any conclusions to the point at least, where you could give us an opinion as to the eligibility or non-eligibility of these particular cases for benefits."

Conversations with you have amplified the above information and the following facts have been added: that the teaching experience of the teachers concerned varies from 10 to 20 years, that a few have been contributors since 1945 and have left their contributions in. It would appear that the question involves teachers who had not qualified for retirement under the provisions of Chapter 64, Sections 6-XIII through XV, because they had not gathered the minimum of 25

years of teaching service. Boiling the question down still further, it appears that the issue presented is whether teachers who, prior to the 1953 amendment giving vested rights to employees of ten years' employment (leaving in their contributions) may now retire by virtue of the 1953 amendment, when all their service was accumulated prior to August 8, 1953, the effective date of the amendment, and in no case amounted to 25 years.

The first sentence of Section 3-VIII of Chapter 64, R. S. 1954, reads:

"Any employee who is a member of this retirement system may leave state service after 10 years of creditable service and be entitled to a retirement allowance at attained age 60 provided the contributions made by such member have not been withdrawn, and provided further, that his retirement allowance shall be based upon the total number of years of creditable service, in accordance with the provisions of this chapter."

Before Section 3, subsection VIII was amended by Chapter 412, P. L. 1953, an employee who was a member of the Retirement System could leave State service after 30 years of creditable service and be entitled to a retirement allowance at age 60. As noted, the 1953 amendment changed the 30 years to 10 years. The only way that a teacher could now retire who had not taught for 25, 30 or 35 years, or who is not teaching upon reaching the eligible age, would be to qualify under Section 3, subsection VIII, having left the service after 10 years of creditable service and left her contributions in. However, we would refer you to our opinion dated August 13, 1953, in which we stated that the amendment to Section 3, subsection VIII, providing for a 10-year rather than a 30-year vested right, was not retroactive and did not give benefits to one who had left State service prior to the enactment of the amendment.

It is our opinion that teachers who are not eligible for retirement under the provisions of Section 6-XIII, XIV and XV may not be eligible by virtue of the 10-year vested right amendment, unless they left the service after August 8, 1953, the same being the effective date of Chapter 412, P. L. 1953.

JAMES GLYNN FROST  
Deputy Attorney General

February 11, 1955

To Julius Greenstein, Chairman, State Boxing Commission

Re: Local Licensing

Your recent inquiry raises the question whether cities and towns may require license fees or tax from boxing promoters in addition to the State Boxing Commission's State license fee and tax.

By Section 7 of Chapter 88 of the Revised Statutes of 1954, the State Boxing Commission has the sole direction, control and jurisdiction over all boxing contests or exhibitions. The words, "or exhibitions," were placed in the law by Chapter 244 of the Laws of 1953. The law in this regard is thus made clearer than it was when this office rendered an opinion on December 12, 1946, that the law which gave the Boxing Commission sole direction, control and jurisdiction had impliedly repealed whatever authority a city may have had theretofore in the premises. The present law is clear that a city or town has no jurisdiction over this subject.

NEAL A. DONAHUE  
Assistant Attorney General