

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1957 - 1958**

August 20, 1958

To Hayden L. V. Anderson, Director of Professional Services, Education

Re: Hearing on Revocation of Teaching Certificates

We have your memo of August 14, 1958, and the attached copies of correspondence between you and a petitioner, whose teaching certificates were revoked as the result of a conviction and sentence to the Maine State Prison.

Anticipating a request to re-establish those certificates, he asks three questions with respect to the hearing that will be had in such a case:

- "1. Where will the hearing be held?"
- "2. Is there any cost?"
- "3. Can I be represented or do I have to be present?"

It appears to us that your answer to Question #1, that you assume that the hearing will be held in Augusta, is a proper answer.

The only cost to the petitioner would be his expenses, which might include attorney's fee, if an attorney is employed.

Petitioner himself should be present at the hearing and he may represent himself at that hearing or be represented by counsel.

JAMES GLYNN FROST  
Deputy Attorney General

August 20, 1958

To Ober C. Vaughan, Director of Personnel

Re: Bona Fide Resignation

We have your memo of August 11, 1958, which reads in part:

"The Personnel Board has directed me to request a ruling from your department in connection with an appeal case now under consideration. I would refer you to Rule 12.1 of the Personnel Law and Rules. The Personnel Board wishes to know whether or not a resignation given under the following circumstances would be considered to be bona fide.

"It is agreed by the parties that the employee was called into the central office of the department and questioned at some length. Following this, he was asked to submit to a lie detector test, which he refused to do. Whereupon the department head gave the employee a choice to resign or be discharged. The employee at that time elected to resign. A copy of his written resignation has been submitted to this department as required. . ."

Your memo does not state that the employee is subject to the provisions of the Personnel Law, but the following opinion is written upon the assumption that he is.

*Answer.* It is our opinion that a resignation given under the above circumstances is not a bona fide resignation, but, instead, amounts to a discharge, or dismissal.

It appears that the majority, if not the universal rule, with respect to resignations is that a resignation procured by duress is voidable and may be repudiated;

and the rule is especially correct where the duress is imposed by the authority having the duty of accepting or rejecting the resignation.

The rule has been applied where the resignation was submitted in the face of a demand to either resign or be fired and lose all rights to a pension. *Moreno v. Cairnes*, 127 P. 2d 194; 20 Cal. 2d 531 (1942).

The rule has also been applied where the choice has been to resign or be charged with a criminal offense, or threatened with personal injury. *State ex. rel. Young v. Ladeen* (1908), 104 Minn. 252, 116 N.W. 486; 16 LRA (NS) 1058. See also *Board of Education v. Rose*, 147 S.W. 2d 83; 285 Ky. 217; 132 ALR 969.

The rule enunciated in the above cases appears to be based on the premise that resignation is a voluntary act, and that, if a resignation is submitted under circumstances where the alternative is to be fired, then such resignation is

“. . . akin to layoffs, suspensions, or discharges by reason of the element of coercion and bears only a formal resemblance to voluntary resignations. Whenever a person is severed from his employment by coercion the severance is effected not by his own will but by the will of a superior. A person who is forced to resign is thus in the position of one who is discharged, not of one who exercises his own will to surrender his employment voluntarily.”

*Morena v. Cairnes, supra.*

For the above reasons we conclude that in the instant case the resignation is not a bona fide resignation. . . .

JAMES GLYNN FROST

Deputy Attorney General

August 20, 1958

To Norman P. Ledew, Chief Examiner, Sales Tax Division

Re: Tax on Post Office Employee Uniforms

You inquire as to the taxability under the sales and use tax law of the sale of uniforms for mailmen who are employees of the Federal Government.

This is a sale to an individual employed by the Federal Government, but it is not a sale to the Federal Government or an instrumentality of the Federal Government.

The reimbursement by the Federal Government to the Federal employee for the expense of purchasing those uniforms is in the nature of a reimbursement for the expense incurred in carrying out his contract of employment with the Federal Government. The sale of the uniforms to the individual mailmen is therefore a taxable sale under the Maine Sales and Use Tax Act.

RICHARD A. FOLEY

Assistant Attorney General