

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

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period, she was elected for a one-year period and both parties executed a written contract. Said teacher was given written notice of termination at least six months prior to the termination of the contract.

Was the one-year contract a valid contract?

The relationship between school authorities and a teacher is created by contract. This contractual relationship still exists after the probationary period. The authority on the part of the school authorities is entirely statutory for the employment of teachers. The extent of the authority to enter into a contract in this case is governed by Chapter 41 of the Revised Statutes of 1954.

See Chapter 41, Section 87, paragraph V, which reads in part as follows:

“Except that after a probationary period of not to exceed 3 years, *subsequent contracts of duly certified teachers shall be for not less than 2 years*, and furthermore, that unless a duly certified teacher receives written notice to the contrary at least 6 months before the terminal date of the contract, the contract shall be extended automatically for 1 year and similarly, in subsequent years, although the right to an extension for a longer period of time through a new contract is specifically reserved to the contracting parties.” (emphasis supplied)

Referring to 78 C. J. S. 1037, Section 185(b.) it is stated that a contract in excess of a term prescribed by statute is void. In *Collins v. City of Lewiston*, 107 Me. 220, the following language is found:

“When a contract conflicts with a statute the former must yield. Otherwise statutes could be modified or repealed without even the approving caress of the referendum.”

It is my opinion that the hiring agent had no authority to execute a contract for one year in the light of the statute.

GEORGE A. WATHEN
Assistant Attorney General

June 24, 1959

To: Harold I. Goss, Secretary of State

Re: Doing of Business in the State of Maine by Foreign Corporations

This is in response to your recent request for an opinion on the question posed in a letter from Harold F. Olsen, Counsel for Boeing Airplane Company, dated April 17, 1959. Mr. Olsen's letter reads as follows:

“Your advisory ruling is respectfully requested as to the necessity for compliance with the provisions of the Maine Revised Statutes, Chapter 49, Sections 123-131, relating to the doing of business in the State of Maine by foreign corporations under the following conditions:

“Boeing Airplane Company is a Delaware corporation, formally qualified to do business in the states of Washington, Califor-

nia, Florida, Kansas, New Mexico, and New York. It operates major manufacturing plants in Washington and Kansas and a missile test center in Florida. The Company maintains facilities in New York for the sale and distribution of jet transport spare parts and maintains extensive research and engineering facilities in California for certain commercial and government projects located there. The Company employs in excess of 65,000 persons.

"In connection with the performance of a contract with the U. S. Government, the Company is engaged as prime Government contractor in supervising the installation of a BOMARC missile base at Dow Air Force Base. Missiles and related equipment are shipped from outside the state to the site by Boeing and other suppliers, and such missiles and equipment are installed and checked out by an independent contractor under contract to Boeing. Approximately four Company employees have been temporarily assigned to supervise this operation. No local residents are employed by the Company in connection therewith.

"The Company is additionally engaged in a temporary program at Loring Air Force Base under Government contract. This program consists of performing modification work on Air Force B-52-type aircraft located at Loring. Approximately 129 Company employees are temporarily assigned to this program, with less than 10% being local hires. All activity connected with this program is confined to Loring Air Force Base, with no substantial contact outside the limits of the Federal reservation.

"Subject to the information set forth above, the Company has no business office in the State of Maine; it solicits no sales in Maine; it has no property located in Maine; and it has no officers or employees located there who have authority to enter into contracts on behalf of the Company or to make other commitments for the Company.

"The Company has not qualified to do business in the State of Maine, since it appears that the work being performed is not of the type within the purview of the applicable statutes relating to qualification to do business. We request your assistance in providing us with a ruling concerning the matters and conclusions set forth above.

"Your advice and assistance in this regard will be very much appreciated."

We are of the opinion that Boeing Airplane Company conducting business in the manner as outlined above, that it, its activities confined to work on land over which jurisdiction has been ceded to the United States and of a character which is temporary rather than continuous, is not so engaged in business in this State as to require compliance with the provisions of Chapter 53, section 127, et seq., of the Revised Statutes of 1954.

JAMES GLYNN FROST
Deputy Attorney General