

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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It seems clear that the State has the power to control the curriculum and studies in public schools as long as it does not conflict with a constitutional provision. See *Donahoe v. Richards*, 38 Me. 376, 392 et. seq.

Subsection VII, Section 11, Chapter 41, Revised Statutes of 1954, prescribes the duties of the Commissioner of Education:

"To prescribe the studies to be taught in the public schools. . ."

This legislative mandate is subject to certain statutory mandates contained therein and is also subject to the statutory duties of the superintending school committee. Subsection III, Section 54, Chapter 41, Revised Statutes of 1954 provides that the superintending school committee

". . . shall make provisions for the instruction of all pupils in schools supported by public money or under state control in physiology and hygiene, with special reference to the effects of alcoholic drinks, stimulants and narcotics upon the human system."

It is my opinion that the legislature has acted in this area and the agencies charged with administration of the law are without authority to exempt any student from those courses required by statute.

GEORGE A. WATHEN
Assistant Attorney General

November 1, 1960

To: Carleton L. Bradbury, Commissioner of Banks and Banking

Re: Retirement Board authority to appoint committees

We have your memo of October 7, 1960 in which you ask if it is within the authority of the Board of Trustees of the Maine State Retirement System to appoint committees composed of members of the Board, which committees would give attention to specific areas of the Board's activities and to advise the Board or perform specific functions designated by the Board.

You are particularly interested in the Board's authority to appoint an Investment Committee with the duty to supervise investment operations. As background to your request you state:

"In connection with the latter subject, it would seem appropriate to bear in mind that investment mediums available to the Board are prescribed by statute. Within this general framework the Board has established after recommendation by investment counsel, a specific investment program which remains in force until altered by the Board. Day to day investment activity to implement this policy, to be effective, must be conducted on a day to day basis. Decisions with respect to specific securities cannot be deferred until monthly Board meetings. The authority of the Investment Committee to make these decisions, however, is limited, first, by statutory investment limitations and, secondly, by the investment program established by the Board and currently in effect."

Answer: It is our opinion that the Board of Trustees does not have authority to appoint such an investment committee.

The trust impressed upon the members of the Board of Trustees is a solemn one. As you point out, Revised Statutes of 1954, Chapter 63-A, section 13-I, states that "The general administration and responsibility for the proper operation of the retirement system and for making effective the provision of this Chapter are vested in a Board of seven trustees."

In order that there would be effective administration of the laws, the legislature granted to the Board specific powers: Appoint an executive secretary, a medical board, an actuary, employ investment counsel, etc. Chapter 63-A, section 13, R. S. 1954.

The legislature also authorized the Board, in one instance, to appoint a Finance Committee empowered to withdraw or deposit securities from or with such custodian as the Board contracted with, and the custodial care and servicing of the negotiable securities belonging to any fund of the Retirement System.

It appears to us that the responsibility of any such Investment Committee would be much greater than that of the Finance Committee above mentioned. The fact that the legislature felt compelled to enact a law authorizing the Board of Trustees to appoint a Finance Committee compels us to the opinion that the legislature should consider the wisdom of authorizing appointment of an Investment Committee.

While a great body of law exists with respect to the Board of Directors of a corporation working through committees, we point out that general business corporations organized in Maine are expressly authorized by statute to function through committees.

Chapter 53, section 32, provides that: "... Directors of corporations may act through committees whose powers shall be defined in the by-laws."

We do not believe that the power of the trustees set forth in section 14-I of Chapter 60-A "subject to like terms, conditions, limitations and restrictions, (as to savings bank) said trustees shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments . . . as well as the proceeds of such investments"—extends to the right of the Board to appoint an Investment Committee, a power extended to savings banks. This section deals not with the composition of the Board, but rather the kinds, quantities, etc. of investments.

JAMES GLYNN FROST
Deputy Attorney General

November 1, 1960

To: Michael A. Napolitano, State Auditor

Re: Disposition of Forfeited Cash Bail

We have your memo of September 15, 1960 in which you state that "During our audits of the courts it has been noted that forfeited cash bail on cases pertaining to Inland Fish and Game as well as Sea and Shore Fisheries violations has been remitted to the county treasurer, however, said forfeitures are being retained by the county."