

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

October 25, 1961

Robert P. Brown
Superintendent of Schools
School Administrative District #13
Bingham, Maine

Dear Mr. Brown:

This is in answer to your letter of October 13, 1961.

I have consulted with Kermit S. Nickerson with the Department of Education and he exhibited to me a letter dated October 4, 1961, answering the question which you propose relative to the exclusion of married students. I am in agreement with the reasoning of Mr. Nickerson's letter that under the law, marriage is not a reason for excluding a student from school.

Very sincerely yours,

RICHARD A. FOLEY
Assistant Attorney General

October 25, 1961

Honorable Welden W. Hanson
Bradford, Maine

Dear Representative Hanson:

This is in answer to your letter of October 14, 1961, relating to the Bradford School District.

Under Private & Special Laws of 1961, Chapter 82, Section 3, a vacancy caused by the resignation of a trustee of the school district is filled by appointment by the municipal officers of the town. We interpret this to mean that the selectmen of the town must appoint offices presently vacant by reason of resignation.

Since the trustees of the school district are appointed by the selectmen and since the trustees report annually to the selectmen as to financial affairs of the district, I am of the opinion that the selectmen should not appoint one of their own members as a trustee of the district.

Very sincerely yours,

RICHARD A. FOLEY
Assistant Attorney General

October 25, 1961

To: Earle R. Hayes, Executive Secretary of Maine State Retirement System

Re: Adjustments in Retirement Benefits for National Guard Service

Reference is made to your memo of October 19 concerning adjustments in retirement benefits made to those persons already retired who should have received prior service credits for Maine National Guard service.

I would call your attention to Revised Statutes, Chapter 63-A, section 13, subsection VIII, which provides in the last two sentences:

"The board of trustees, upon discovery of any error in any record

of the system, shall, as far as practicable, correct such record. If any such error results in the receipt from such system by any member or beneficiary of more or less than he would have been entitled to receive had the records been correct, payments shall, as far as practicable, be adjusted in such manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid."

It is my opinion that the failure of the trustees of the retirement system to give prior service credits for Maine National Guard service constitutes an error by the trustees.

Therefore, adjustments in the benefit amount presently being paid to State employees and/or teachers who did not receive, at point of original retirement, credit for National Guard service should now be made, together with retroactive payments to the date of original retirement.

Adjustments should also be made in the case of payments to a beneficiary of a deceased retirant who should have originally been credited with this service.

GEORGE C. WEST

Deputy Attorney General

October 31, 1961

To: Earle Hayes, Executive Secretary of Maine State Retirement System

Re: Status of "E.R.A." Service

Reference is made to your memo of September 18, 1961. You have asked this office to give the Board of Trustees of the Retirement System an opinion as to whether or not prior service (P.L. 1955, C. 417 § 1) credits toward retirement may be allowed to State employees who are members of the Retirement System for services rendered to the Emergency Relief Administration.

This same question was referred to the Attorney General's office in 1948 and at that time Ralph W. Farris, Sr., Attorney General, ruled that employment by the Emergency Relief Administration was not State employment and, therefore, prior service credits toward retirement were not allowable for such employment. At the moment, I am not prepared to overturn the opinion rendered by Mr. Farris.

I am not sure that what you request is truly a legal question or legal interpretation. The law is very clear that if an individual now in State employ and a member of the Retirement System was employed by the State prior to the beginning of the present Retirement System, he is entitled to prior service credits for such employment. The question of whether such employment was by the State is a question of fact which ultimately must be decided by the Board of Trustees.

It is up to the employee seeking this credit to satisfy the Board of Trustees with proper evidence that his employment by the Emergency Relief Administration was State employment. It might be well to mention four basic criteria which must be met in order for the Board of Trustees to determine that employment was by the State. The items which are set forth may not be the only ones which the Board of Trustees believe are necessary to support a claim of employment by the State. The Board of Trustees may require additional criteria as their discretion.