

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

Waiters, waitresses and car hops whose tips are required to be divided with others are also subject to the minimum wage law.

GEORGE C. WEST

Deputy Attorney General

January 9, 1962

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

Re: Status Under Retirement Law of Certain Commissioned Officers

Reference is made to your memo of December 6, 1961. You are faced with the problem of certain former State employees who have remained in the armed forces since induction or enlistment during World War II. You ask the question whether commissioned officers are entitled to retirement credits since August 28, 1957, being the effective date of Chapter 26, Public Laws of 1957. This chapter reads as follows:

“No such credits shall be allowed to count toward a state retirement benefit beyond the period of first enlistment or induction into the said armed forces unless the individual involved is compelled to continue service under some mandatory provision.”

An amendment to the Personnel Law, Chapter 25, Public Laws of 1957, reads substantially the same.

It therefore follows that a person in the Armed Forces is not entitled to retirement credits after August 28, 1957, unless the individual can present conclusive evidence to the Board of Trustees that such individual was “*compelled* to continue service under some mandatory provision” of the Selective Service Act or any extension or amendment thereof.

GEORGE C. WEST

Deputy Attorney General

January 12, 1962

To: Maine Employment Security Commission

Re: Area Redevelopment Act Program

You have submitted a verbal request relative to the present effectiveness of the opinion of December 31, 1956 by James Glynn Frost, Deputy Attorney General, as applied to a new federal program known as the Area Redevelopment Act Program. The Federal Government has asked whether or not the bond of the Treasurer of the State covers funds transmitted to the State by the Federal Government under this Act.

This office confirms the opinion by James Glynn Frost, former Deputy Attorney General, dated December 31, 1956, and advises that this opinion covers the additional funds coming to the State through the new federal program. It is the opinion of this office that the bond of the State Treasurer does cover the funds received under the provisions of the Area Redevelopment Act Program. I

might state that since the opinion of December 31, 1956, the Treasurer's bond has been increased from \$150,000 to \$500,000.

GEORGE C. WEST

Deputy Attorney General

January 15, 1962

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Status of Leavitt Institute for Participation under Federal Programs

You have inquired as to the status of Leavitt Institute as a public school so that the institute may qualify for federal funds under the National Defense Education Act of 1958.

Under the National Defense Education Act of 1958 (U.S.C., Title 20, Sections 401 to 589) federal funds are administered under the auspices of a state plan approved by the United States Commissioner of Education. The state plan is drawn up by the State Board of Education. U. S. C., Title 20, § 443(a) authorizes the expenditure of federal funds under the state plan for acquisition of laboratory and other special scientific equipment, textbooks in languages, sciences and mathematics suitable for use "in public elementary or secondary schools or both."

The question proposed is whether Leavitt Institute qualifies as a "public secondary school" under § 443(a), *supra*.

In an opinion of this office dated February 12, 1952, it was indicated that if a joint board was formed (now authorized under R. S. 1954, c. 41, § 105), combined with a tuition contract between the town of Turner and Leavitt Institute then the academy would qualify as a public school for the purposes of the receipt of federal funds. There is presently a tuition contract between the town and Leavitt Institute but no joint board exists.

The suggestion has been made that since the superintending school committee of Turner is *ex officio* the executive committee of Leavitt Institute, then this arrangement could substitute for a joint board. Under Article VI, eleventh paragraph of the by-laws of Leavitt Institute, the executive committee has the duties of making rules governing the admission of pupils, fixing the amount of tuition of non-resident pupils, employing a principal and teachers and fixing the salaries and keeping the buildings in ordinary repair. The actions of the executive committee are not subject to the approval of the Board of Trustees.

I do not find, however, that the executive committee has the authority to prescribe the curriculum of Leavitt Institute. The power to prescribe the course of study is a primary function of a superintending school committee in supervision of a public school. One of the duties of a joint committee under chapter 41, § 105, is to "arrange the course of study of the academy."

The trustees of Leavitt Institute were incorporated by special legislative charter, Private and Special Laws of 1901, Chapter 257. The trustees were granted the power to make by-laws and were intrusted "with all the privileges and powers incident to similar corporations." Article VI of the by-laws provides in part that the trustees shall have the general management of the affairs of the corporation and of Leavitt Institute.