

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1961 - 1962

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.

Since the executive committee is not specifically vested with the control of the curriculum, the board of trustees retains that control by virtue of the charter and the by-laws above referred to.

It is my opinion that the present arrangement of the superintending school committee acting ex officio as the executive committee is not a substitute for the joint committee authorized under section 105 of chapter 41.

The existence of a joint committee, a tuition contract between the town and the institute, as well as the requirements under chapter 41, sections 125 through 129, that the academy make reports to the Commissioner of Education, is subject to the State Board of Education regulations, and is subject to audit by the Commissioner of Education when receiving tuition payments is sufficient to warrant a conclusion that an academy would qualify as a "public school" under the National Defense Education Act of 1958.

I do not find under the National Defense Education Act of 1958 that a determination by a state that a particular type of school is a public school for the purpose of federal aid is binding upon the United States Commissioner of Education. I would suggest, therefore, that you consult with the United States Commissioner of Education as to whether or not he will concur with this opinion.

RICHARD A. FOLEY

Assistant Attorney General

January 16, 1962

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Tax-Sheltered Annuities for Teachers

This is in answer to several questions you propose in relation to Section 403(b) of the Internal Revenue Code authorizing certain tax benefits to public school employees under contracts of annuity insurance.

Answer to Question I(a): Section 163 of Chapter 60, Revised Statutes of 1954, authorizes the state, any county, city, town or other quasi-municipal corporation to "contract with any such (insurance) company granting annuities or pensions for the pensioning of such employees and, for such purposes, may agree to pay part or all of the premiums or charges for carrying such contract. . ."

It is my opinion that towns, cities and school districts are authorized to enter into *group* annuity contracts for the benefit of teachers.

Under the Internal Revenue Law the premiums for the annuity must be paid by the employer and are not considered a part of the gross taxable income of the employee. Such annuity premiums would not be a part of the teacher's salary and would not be includable in the cost of the foundation program under Section 237-C-II of Chapter 41, R. S. 1954.

Answer to Question I(b): This question is answered in I(a) above except that Section 163 of Chapter 60, supra, authorizes group annuity contracts and not contracts of annuity between employer and the insurance company for the benefit of an individual teacher.

Answer to Question I(c): An amendment to Section 237-C of Chapter 41, R. S. 1954, would be necessary to include such annuity premiums as part of the foundation program for subsidy.