

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

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.

Answer to Question I(d): If the teacher's salary is reduced by an amount equal to the annuity premium payment by the employer, the resulting reduced gross salary may, in some cases, fall below the teacher's minimum salary schedule as provided in Section 237-A of Chapter 41, R. S. 1954. Said section would have to be amended if the intention is to include the annuity premiums as part of the salary paid to the teachers for the purpose of the minimum salary schedule.

Answer to Question I(e)-(1): Under Section 24 of Chapter 63-A, R. S. 1954, the annual compensation of the teacher determines the maximum amount of the group life insurance available to that teacher. If it is intended to include within the meaning of the term "annual compensation" the annuity premiums paid by the employer, then an amendment would be necessary to the said section.

Answer to Question I(e)-(2): Section 1 of Chapter 63-A, R. S. 1954, defines "earnable compensation" for the purposes of the Maine State Retirement System as actual compensation including maintenance, if any. The earnable compensation determines the amount of contribution made by the employee to the retirement fund and the retirement benefit payable to the employee. The definition of earnable compensation does not include annuity premiums paid by the employer. The Maine State Retirement law would, therefore, have to be amended if the intent is to include the annuity premiums paid by the employer as part of the earnable compensation for retirement purposes.

Answer to Question I(f): This question has been answered in I(c) above.

Answer to Question II: I hesitate to recommend any change in the standard form of teacher contract until there is considerable consultation with the Internal Revenue as to their requirements relating to the tax-sheltered annuity plans. Any change in the standard form of teacher contract should be made only after consultation with the Maine Municipal Association, Maine Teachers' Association and the Department of Education.

RICHARD A. FOLEY

Assistant Attorney General

January 16, 1962

To: Ronald W. Green, Commissioner of Sea & Shore Fisheries

Re: Size of Herring taken from Canadian Waters

We have your request for an opinion with regard to the interpretation of Revised Statutes, chapter 37-A, section 34, as amended. As we understand the problem, the question is whether this section of the law forbids any person from having in his possession herring of less than 4 inches in length, whether or not these herring were taken in Maine territorial waters. The applicable section of the law is as follows:

"Sec. 34. Size of Herring. It is unlawful for any person, firm or corporation to take from the coastal waters of Maine, to sell, to offer for sale, to purchase, to possess, to ship, to transport, or to have in possession herring which are less than 4 inches long, overall length measured from one extreme to the other, except as provided in this section."

You have asked us specifically whether the statutory language quoted above forbids the use in Maine of herring under 4 inches in length which have been