

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1961 - 1962

Dictionary, 4th ed., p. 1068. As a license does not in any way convey the lands of the state, it can be granted by a state department without specific legislative approval. We, therefore, recommend that the Department of Inland Fisheries and Game execute a license giving the aforementioned company the right to perform the acts in question.

We are enclosing such a limited license for your approval.

THOMAS W. TAVENNER

Assistant Attorney General

February 21, 1962

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Contracts and Joint Committees Between Towns and Academies

This is in answer to your two questions relating to Section 105, Chapter 41, Revised Statutes of 1954.

"1. Has an academy the right to contract with the superintending school committee of more than one administrative unit to provide secondary school education?"

Answer: I find nothing in Section 105 of Chapter 41 which would prevent an academy to contract with the superintending school committees of more than one town for secondary education.

"2. If a town contracts with more than one administrative unit may a joint committee be formed with more than one town? If this is legally possible, would such joint committee be formed as a separate committee with each unit or a joint committee comprising all units and the trustees?"

Answer: I find nothing in Section 105, Chapter 41, which would prevent the formation of a joint committee consisting of the superintending school committee of Town A, the superintending school committee of Town B and an equal number of trustees of the academy.

RICHARD A. FOLEY

Assistant Attorney General

February 23, 1962

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

Re: Status under State Retirement System of Retired State Police Officer

Reference is made to your memorandum of February 13, 1962, asking about the status of state police officers who might retire under the provisions of Chapter 15, section 22, and then seek employment with the State or as a public school teacher. It is assumed you are concerned with the status of such persons relative to retirement rights under the Maine State Retirement System.

Chapter 63-A, section 3, I, provides:

"The membership of the retirement system shall be as set forth following:

I. Any person who shall become an *employee* shall become a member of the retirement system as a condition of employment and shall not

be entitled to receive any retirement allowance under any other retirement provisions supported wholly or in part by the state, anything to the contrary notwithstanding:" (Emphasis supplied)

The word "employee" is defined in section 1 as follows:

"'Employee' shall mean any regular classified or unclassified officer or employee in a department, including teachers in the state teachers' colleges and normal schools, and for the purposes of this chapter, teachers in the public schools, *but shall not include . . . nor shall it include* any member of the state police who is now *entitled* to retirement benefits under the provisions of sections 22 and 23 of chapter 15." (Emphasis supplied)

The clear meaning of the definition of "employee" as used in Chapter 63-A, section 1, is that it does not include a state police officer *entitled* to retirement benefits under Chapter 15, sections 22 and 23. Therefore, if such a person should accept employment in another state department or as a teacher, he would not be an "employee" so far as the retirement law is concerned.

In other words, even though he may become employed by the state or as a teacher, he could not join the Maine State Retirement System. As far as the trustees of the State Retirement System is concerned, such a person is not an "employee" and the trustees cannot exercise any control whatever over the retirement benefits of such person.

GEORGE C. WEST

Deputy Attorney General

February 26, 1962

To: Paul A. MacDonald, Secretary of State

Re: Pardon Petition re Conviction twice of Driving Under the Influence

I have your letter of February 19, 1962, transmitting a request for an opinion from the Governor and Executive Council.

The facts are as follows:

A man has been convicted twice of driving under the influence of intoxicating liquor; the first conviction became final on January 26, 1954, and his second on August 11, 1959.

Under the provisions of Section 150 of Chapter 22 of the Revised Statutes he is not eligible for a hearing on the question of restoration by the Secretary of State until August 11, 1962. He sought a pardon of his 1959 offense so as to make him eligible for an operator's license at this time. The Governor and Council were willing to remit the penalty only as to loss of license in connection with the August 1959 conviction on condition that the petitioner be granted a license to operate motor vehicles in conjunction with his employment during working days only. This restriction to continue for a period to be determined by the Secretary of State.

Question: The question, based on these facts, is:

May the Governor, with the advice and consent of the Council, remit a loss of license only, without a pardon as to the conviction upon which the loss of license was based?

Answer: No.