

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

You mention in your memo that if such persons were on a regular payroll there would be no problem. You state that being paid on a voucher basis seems to preclude them from retirement status. There is no reference in the retirement law to the necessity of an employee being on a payroll in order to have the benefit of the state retirement system.

The actual answer to your query is in the hands of the board of trustees. Revised Statutes, Chapter 63-A, section 3-IV, provides:

“The board of trustees may, in its discretion, deny the right to become a member to any class of employees. . . . or who are serving on a temporary or other than *per annum basis*.” (Emphasis supplied.)

A similar idea is also expressed in Section 4-IV.

“The board of trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to 1 year of service, . . . .”

So the board may deny retirement rights to any *class* of employees who are serving on other than a per annum basis. Per diem employees could be considered such a *class* of employee.

The board must also determine what constitutes a year of service. Therefore, the board has the full responsibility of determining if persons receiving per diem pay are eligible for membership in the retirement system.

GEORGE C. WEST

Deputy Attorney General

February 28, 1962

To: Ober Vaughan, Director of Personnel

Re: Return from Leave Rights — Marie F. Hunter

You ask in your memo of February 20, 1962, if the above should return to state service does she have return from leave rights under section 28, chapter 63.

The above section provides in substance that an employee who has been employed at least 6 months and has attained permanent status and who enters military service, under certain conditions, shall be considered on leave of absence without pay. He shall be considered as in the service of the agency by which employed at time of entry into the military service during such service for pension and seniority rights.

An amendment enacted as Public Law 1957, Chapter 25, added the following sentence to the above section:

“No credits toward retirement under the State Retirement System, nor vacation or sick leave accumulation shall be allowed beyond the period of first enlistment or induction in said armed forces of the United States unless the individual involved is required to remain in or return to military service beyond the first period of service under some mandatory provision.”

This amendment became effective August 28, 1957. Therefore, up to August 28, 1957, the above-named individual had retirement, sick leave and vacation rights. The two latter rights would accumulate according to the regulations of the Personnel Department in effect on August 28, 1957. No rights to retirement,

sick leave or vacation accrue after that date. The right to return to state employment in the same department still remains. This latter right must be exercised within 90 days following discharge or retirement from military service.

GEORGE C. WEST

Deputy Attorney General

March 7, 1962

To: Asa Gordon, Coordinator of Maine School District Commission

Re: School Administrative District #3, Legality of Formation

This is in answer to your memorandum of January 22, 1962, proposing certain questions relating to the legality of School Administrative District #3.

Question No. 1: "Is School Administrative District #3 validly organized?"

Answer: Yes. School Administrative District #3 is validly organized under the school administrative district law.

Question No. 2: "If so, are the directors authorized to issue bonds pursuant to the vote taken in March of 1961?"

Answer: Yes.

Question No. 3: "Is this vote effective in authorizing the issuance of these bonds?"

Answer: Yes.

Question No. 4: "Will such bonds be binding obligations on School Administrative District #3?"

Answer: Yes. The bonds will be binding obligations of School Administrative District #3. Litigation pending against the district, *Peavey et al v. Nickerson et al*, will not preclude the issuance and sale of the bonds since the issue in the case now pending in the Superior Court, Waldo County, that is, whether or not the Fourteenth Amendment of the Constitution of the United States requires the Maine School District Commission to give notice and hearing to the inhabitants of the district before issuing the certificate of organization of the district authorized under Section 111-G of Chapter 41, has previously been litigated twice in the courts of this State. The exact issue in question was first litigated in *McGary et al v. Barrows et al*, 156 Me. 250 at page 265; *Elwell et al v. Elwell et al*, 156 Me. 503 at page 506. It is our opinion that the present litigation will not preclude the sale of bonds.

Question No. 5: "Shall we make further payments to School Administrative District #3 as required by sections 236 and 237, chapter 41?"

Answer: Yes. Subsidy may be paid to School Administrative District #3 including construction subsidy under section 237 of chapter 41.

RICHARD A. FOLEY

Assistant Attorney General