MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

Chapter 63-A, section 6, subsection IV-A, reads as follows:

"A. Any member who

"1. Was a member on July 1, 1947 and is the deputy warden, the captain of the guard, or a guard of the state prison; or a warden in the department of inland fisheries and game, or a warden of the department of sea and shore fisheries, or

"2. Is a member of the state police, including the chief thereof, and who became a member of that department subsequent to July 9, 1943; an airplane pilot employed by the state of Maine; or a member of a fire or police department including the chiefs thereof and sheriffs and deputy sheriffs, and, in any case, who has at least 25 years of creditable service in his respective capacity, may be retired on or after the attainment of age 55 on a service retirement allowance."

The employee in question began his state employment on 8 August 1937 and has been continuously employed through the present time. When the State Retirement System came into effect in 1942, this employee became a member. From 1937 until 1945 this employee worked as a guard at the Maine State Prison, and from 1945 until the present, he has been a member of the Maine State Police.

It is our opinion that the employee in question clearly falls within the mandate of section 6, subsection IV-A. He was a member on July 1, 1947 as a guard; he became a member of the State Police subsequent to July 9, 1943; he has at least 25 years of creditable service; service has been continuous from 1937.

I specifically call your attention to the last few lines of section 6, subsection IV-A, number 2, where it states:

" . . . *in any case,* who has at least 25 years of creditable service in his respective capacity . . . "

There is nothing in section 6, subsection IV-A, number 2 that is intended to mean that an employee must stay in one specific job, as enumerated, for the full tenure of service. The job of a guard, and the job of a state police officer are both enumerated within the above mentioned section. Had the employee in question been either a guard or a state police officer exclusively, for the full tenure of his service, there would be no question as to his retirement eligibility. It is, therefore, our opinion that the Legislature did not intend to divest any employee of his retirement benefits if he were to transfer from one department in the state to another department, both being specifically enumerated in the above-mentioned statute.

WAYNE B. HOLLINGSWORTH
Assistant Attorney General

March 13, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Additions to Flanders Bay Community School District

Your memorandum of February 11, 1963 is answered below:

Facts:

The towns of Franklin and Steuben voted affirmatively to join the Flanders Bay Community School District (hereafter called District). Each of the towns in the District voted affirmatively on the admission of Franklin and Steuben. In the voting, however, it appears that the procedure was complicated by the fact that the two towns sought admission at the same time and that Franklin did not vote on approval of the admission of Steuben and neither did Steuben approve the admission of Franklin.

Question:

Whether the District is properly constituted with the addition of these two towns?

Answer:

The District is properly constituted with the addition of these two towns.

Reason:

The material provision of law is section 121 of Chapter 41, R. S. 1954, as amended:

> "The inhabitants of and territory within any town not originally in the district may be included upon vote of all the towns concerned in a manner similar to that prescribed for the establishing of the community school or schools under such terms and arrangements as may be recommended by the community school trustees and approved by such vote; provided the cost to the inhabitants and territory so applying shall be based on a fair valuation as determined by the state board of equalization."

Note that the facts do not concern themselves with the original formation of a community school district. When two or more towns contemplate the original formation of a community school district each town votes upon an article which article gives recognition that another town (or towns) is concerned also with such formation. Sec. 112 of C. 41, R. S., as amended.

A reading of Section 121, earlier set forth, indicates that once a community school district is formed, another town (or other towns) may join such district, "upon vote of all the towns concerned" and such vote shall be "in a manner similar to that prescribed for establishing" such districts. Certainly, neither Franklin nor Steuben possesses the necessary legal status to preclude the other from presently joining the district.

Continuing, a vote by Franklin approving Steuben's admittance to the District and a vote by Steuben approving the admittance of Franklin to the District would add no legal emphasis to the formation of the District for the reason that the District may designate which municipalities it shall accept as additions thereto.

The conclusion must be that a vote of "cross approval" by Franklin and Steuben is not presently contemplated by the applicable statutes.

JOHN W. BENOIT
Assistant Attorney General