

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

in its amended form. Below the signatures of the Speaker, the Senate President and the Governor, appears a stamp, and the signature of Harvey R. Pease, Clerk. The stamp reads, "House of Representatives, House Receded & Concurred, June 22, 1963." Without resort to the legislative journal, or to testimony of the Clerk or other persons, it cannot be determined at what point in the sequence of events this stamp was placed on the bill.

In *Stuart v. Chapman*, 104 Me. 17, two amendments to the same statute were passed and signed on the same day. It was urged that the legislative journals showed that one bill was passed and signed before the other, and was thus amended by the latter. The court held that the journals could not be used to prove this fact, and held that, nothing appearing to the contrary, statutes approved on the same day would be presumed to have been approved contemporaneously.

By the same token, the journal, or other evidence outside the bill itself, cannot be resorted to in order to find out precisely when or with what intent the stamp was placed on the bill. In and of itself, the stamp does not indicate any irregularity such as to invalidate the bill.

It is the opinion of the Attorney General, therefore, that the bill designated P. & S., 1963, chapter 182, on deposit in your office, is a valid act and should be placed on the ballots to be used in the special election of November 5, 1963.

Very truly yours,

FRANK E. HANCOCK

Attorney General

July 19, 1963

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

Re: Right of Former Employee to Retirement — Military Leave

Facts:

An employee of the Maine State Library entered military service in February, 1941. He remained in service until December 31, 1950, when he retired with a permanent physical disability. He was under medical care from January 1951 to April 1954.

On advice of medical authorities, he went to work in May 1954 for Tele-dale Distributing Company, St. Petersburg, Florida. Employment continued through April 1957. Left employment due to heart attack.

Since 1957 he has worked a few weeks each winter in T. V. antenna work to keep busy.

He has been advised not to do any work that requires physical exertion or mental strain. He is not allowed to live in a cold climate.

He is under constant medical supervision at both Walter Reed Army Hospital and State Hospital McDill Air Force Base, Tampa, Florida.

Question:

Is the former state employee eligible to return to state employment thereby validating his credits toward retirement after this extended period of time?

Answer:

No.

Opinion:

There may be some doubt as to whether this employee is covered under the State Retirement System. He entered military service prior to the enactment and the effective date of the present retirement law. Also he entered service prior to "a time of war." However, we prefer to assume, without deciding, that he was a member of the retirement system and answer the question on that basis.

Revised Statutes 1954, chapter 63-A, section 3, subsection VI, provides in part:

"No member who is otherwise entitled to military leave credits shall be deprived of this right if his return to covered employment is delayed beyond the 90 days after his honorable discharge if the delay is caused by a military service incurred illness or disability."

The answer to the question depends on whether the former employee's "return to covered employment" is delayed "by a military service incurred illness or disability" beyond 90 days after his honorable discharge. Initially his return was so delayed. From December 31, 1950 to April 1954, he could not return to work because of "service incurred illness or disability."

In May 1954 he obtained employment and continued through April 1957, a period of three years. There appears to be a period of three years when he could have returned to covered employment, thereby asserting his right to retirement credits. He failed to do this and has now no rights to any retirement credits from the State of Maine.

GEORGE C. WEST

Deputy Attorney General

July 24, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Requirements for Graduation

Facts:

The trustees of a private secondary school have adopted a regulation requiring all seniors to successfully pass four subjects for that particular year. In order that a secondary school acquire State approval for attendance, tuition or subsidy purposes the graduation requirements of such school should include, among other things, 16 Carnegie units earned in grades 9 through 12 inclusive.

Several local municipalities cause their pupils to attend this private institution; and tuition moneys are paid the school by the municipalities.

It is possible, under this regulation, that a tuition student with more than the statutory amount of 16 Carnegie units would be denied graduation because of his failure to have passed four courses in the senior year.

Question:

Whether the private school regulation is compatible with the statute as both relate to graduation requirements?