

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

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?

Answer:

Yes.

Opinion:

Our statute contains the following language relative to Carnegie units:

“. . . No school shall be given basic approval for attendance, tuition or subsidy purpose . . . unless it meets the following requirements:

“ . . .

“VIII. The requirements for graduation include 16 Carnegie units earned in grades 9 through 12, inclusive, 4 of which shall be in English and 1 in American History.”

A leading text defines graduation as “the completion of the prescribed course which entitled one to a diploma.” 79 *C. J. S.*, “*Schools and School Districts.*”

Another text contains the following matter:

“The governing board of a school which is authorized to examine students and to determine whether they have performed all the conditions prescribed to entitle them to a diploma or other evidence of completion of the course of study exercises quasi-judicial functions, and in that capacity its decisions are conclusive, providing its action has been in good faith, and not arbitrary. . . .” 47 *Am. Jur.*, “*Schools,*” § 149.

VIII of the statute makes use of the word “include.”

“The term ‘includes’ is ordinarily a word of enlargement and not of limitation.”

“‘Include’ means to comprise as a component part, to enclose within, contain, embrace.”

“‘Include’ has two shades of meaning. It may apply where that which is affected is the only thing included, and it is also used to express the idea that the thing in question constitutes a part only of the contents of some other thing. It is more commonly used in the latter sense.” *Words and Phrases*, “Include.”

The language of VIII uses the word “include” to express the idea that the 16 Carnegie units constitute a part of the requirements of graduation; and such expression is a minimum rather than a maximum requirement.

Your memorandum indicates that the private school in question has acquired approval of its educational program from the State Board of Education. Such approval constituted an authorization of the school’s program for attendance and tuition purposes. *C. 41, § 125, R. S. 1954.*

We read VIII as stating a minimum requirement prerequisite concerning the acquisition of state approval for attendance, tuition, and subsidy purposes. We have found no statutory maximum requirement relative to high school graduation.

The present facts reveal that certain municipalities provide for the management of schools through superintending school committees pursuant to *R. S. 1954, C. 41, § 45 and § 54.* The latter section authorizes each such committee to “direct the general course of instruction” of students within its jurisdiction. Section 105 of the same chapter allows any administrative unit to authorize its superintending school committee to contract with the

trustees of an academy for the schooling of all or part of its pupils. Each superintending school committee may direct a general course of study being always mindful of legislative requirements. But this is not to say that all schools must have exactly the same course of study.

“ . . . Equal and uniform privileges and rights should control over all the state, but this does not mean that each and every school shall have exactly the same course of study. . . . ”
47 Am. Jur., Schools, § 10.

Courts are not prone to interfere with the exercise of discretion by school officials in matters confided by law to their judgment unless there is a clear abuse of discretion or a violation of law.

“ . . . and they will not consider whether the regulations are wise or expedient, but merely whether they are a reasonable exercise of the power and discretion of the board. . . . ”

In conclusion, we find no repugnancy between the school's regulation and the above cited statute relative to Carnegie units in high school graduation requirements.

JOHN W. BENOIT

Assistant Attorney General

July 30, 1963

To: Asa A. Gordon, Director, School Administrative Services

Re: Post-Graduate Student Tuition Fee

Your memorandum of July 19, 1963 is hereby acknowledged.

Facts:

A person under twenty-one years of age who was graduated from a public secondary school in this State desires to serve a post-graduate course in such school. Maine law provides that every person between the ages of five and twenty-one shall have the right to attend the public schools.

First Question Posed:

1. Is it legal and proper for an administrative unit to charge a fee for students attending a post-graduate course if the students are under twenty-one years of age?

We respectfully prefer to restate the first question thusly: Whether free tuition privileges in the public school system extend to post-graduate courses?

Answer — To Restated Question

Free tuition privileges in the public school system do not extend to post-graduate courses.

Reason:

We advance the following statutory excerpts as evidence of legislative intention that free tuition privileges in the public school system extend through grade twelve only.

“ . . . that any youth who has satisfactorily completed the course of study of an approved secondary school in which the program of studies terminated before the 12th grade, as provided by section 98, shall be entitled to his free tuition, for the completion of grades 9 to 12 in an approved secondary school without the exami-