

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

In Maine, a school committee's duties are prescribed by statute; and those duties do not permit that committee to alter the age requirements prescribed by the Legislature. *R. S. c. 41, § 54.*

In the absence of an express age limitation, a school committee may fix the age requirement. *79 C. J. S., Schools and School Boards, § 448.* But the Maine Legislature has set statutory age requirements. *R. S., c. 41, § 44, § 207-A, § 207-B.*

The regulation promulgated by the municipality, when practiced, works to the detriment of the exceptional and handicapped children of the community. Too, promulgation of the regulation necessarily resulted in the school committee applying itself to a field of endeavor (mental health) without first having acquired the requisite experience.

"In an increasing number of jurisdictions the responsibility of the local board does not end with exclusion of an exceptional child. Often it must send the child to a neighboring district where facilities are available. Payment of expenses for tuition and transportation in such cases is normally determined by the statutes." *Legal Aspects of School Board Operation*, Hamilton and Reutter, 1958, Columbia University.

Tuition expended by the municipality pursuant to *R. S., c. 41, § 207-A - § 207-H* is a subsidizable item.

JOHN W. BENOIT

Assistant Attorney General

April 9, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Teacher Retirement

Facts:

A local school committee has promulgated a regulation providing for the compulsory retirement of public school teachers prior to age 70. The Maine Revised Statutes, Chapter 63-A, decrees a statutory procedure for retirement entitled "Maine State Retirement System"; and this System, inter alia, sets the compulsory retirement age at 70. *R. S., c. 63-A, § 6, I, B.*

Question:

Whether a local school committee has the authority to legally establish and enforce a regulation making public school teacher retirement compulsory prior to age 70?

Answer:

No.

Reason:

Applicable provisions of law taken from Chapter 63-A are set forth below:

"*Sec. 1. Definitions.*

....

"'Employee' shall mean any regular classified or unclassified officer or employee in a department, including teachers in the state teachers colleges, and for the purposes of this chapter, teachers in the public schools. . . ."

....
" 'Teacher' shall mean any teacher, principal, supervisor, school nurse, school dietitian, school secretary or superintendent employed in any public school, including teachers in unorganized territory."
....

"Sec. 3. Membership.
....

"IV. The board of trustees may in its discretion, deny the right to become a member to any class of employees whose compensation is only partly paid by the State, *with the exception of teachers*, or who are serving on a temporary or other than per annum basis.

"V. . . . For the effective handling of this subsection, the commissioner of education shall furnish this information (employee statistics) to the board of trustees for all teachers."
....

(Emphasis and parenthesis supplied).

Chapter 63-A of the Maine Revised Statutes is a measure providing a retirement system for specified employees; and the legislative expression in the Statute evidences the intention that public school teachers are employees in the system. *R.S., c. 63-A, § 1; § 3; 6, V; § 13, I.* This legislative mandate provides, inter alia, that members in the system may retire at age 60 and must retire at age 70. *R.S., c. 63-A, § 6, I, A and B.* It is our opinion that with the enactment of Chapter 63-A, the State of Maine has pre-empted the field of retirement with respect to teachers, that the laws of the State of Maine are paramount, and that all rules and regulations pertaining to teachers made by municipalities must be consistent with the Maine Laws relating to the same field.

We do incorporate by reference, our opinion of January 25, 1952, wherein this Office rendered an informal opinion of the same tenor as expressed herein.

Respectfully yours,

JOHN W. BENOIT

Assistant Attorney General

April 10, 1964

To: Asa Gordon, Coordinator of Education

Re: Formation of School Administrative Districts

Facts:

Recently, we learned from town officials that an administrative unit voted upon the question of district formation. Two other municipalities also voted upon the same question; and these two municipalities favored formation. The town in question did not approve formation of the school administrative district. Subsequently, the town again voted on the question and favored formation of a district. Now, the town is to vote a third time upon the question of the creation of a school administrative district. These sev-