

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

....
" '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-

eral town meetings are being conducted pursuant to a single petition filed with the State Department of Education.

Question:

Whether plural action of the town upon the question of district formation is supported by legislative mandate?

Answer:

No.

Reason:

Section 111-F, IV, of chapter 41, Revised Statutes, provides that the Department of Education (successor to the School District Commission) shall direct petitioning municipalities to vote "in favor of or in opposition to" prescribed articles. Section 111-G of the aforementioned chapter prescribes that the Department of Education shall make a finding of fact upon the vote. Because the vote is designated as the basis for the finding of fact, plural voting implies plural, independent finding of fact.

Appreciation of the practical problems involved in plural voting necessitates our advising the State Board of Education that findings of fact are to be based upon the initial vote of the petitioning municipalities; and that they are to remain passive with respect to plural voting by the municipalities. If municipalities desire to re-vote the question of district formation, they should again petition the State Board of Education pursuant to R. S., c 41, § 111-F.

JOHN W. BENOIT

Assistant Attorney General

April 24, 1964

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Legal School Entrance Age

Facts:

A Maine town has requested permission (of the Department of Education) to conduct a special one-year childhood education program for children who will be five years of age between October 15 and December 31 of the school year. Children would be tested and evaluated, and those children meeting prescribed standards would be allowed to attend the special program to be conducted concurrently with the regular kindergarten classes. Children completing the special program, who are adjudged sufficiently prepared and matured for admission to grade one, would be admitted to grade one even though they would not attain six years of age on or before October 15.

Questions:

- (1) Whether such a project is legally permissible under R. S., c. 41, § 44?
- (2) Whether it is legal to place a pupil, who has participated in this special project and who is judged sufficiently prepared and matured, in a grade-one class the following year even though the pupil will not be six years of age by October 15?

Answers:

- (1) No.
- (2) No.