

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

We advance the following material located in a leading text in the field of Law:

"Sec. 484. Grades or Classes and Departments.

"c. Assignment of Pupils to Grades or Classes. Under a power to prescribe necessary rules and regulations for the management and government of the schools, a school board may require a classification of the pupils with respect to the branches of study they are respectively pursuing and with respect to the proficiency or degree of advancement in the same branches, having regard also to their physical and mental capacity, and may make rules governing methods of school work; and a parent has no right to interfere with the board's exercise of its discretion and demand for his children instruction in certain classes or grades against the judgment of the board. . . ."

"d. Promotion and Demotion.

"Under its general power to prescribe rules for the school government, a school board may prescribe rules governing tests and examinations for promotion. Double promotion of a pupil from one grade to the second higher grade without attendance in the intervening grade is discretionary with the board, . . . " 79 C. J. S., *Schools and School Districts.*

In view of the statutory expression located in R. S., c. 41, § 54, VIII, and the developed case law reported in Corpus Juris Secundum, the local school board possesses authority to promote a qualified student from one grade to the second higher grade without attendance in the intervening grade.

JOHN W. BENOIT

Assistant Attorney General

May 5, 1964

To: Earle H. Hayes, Executive Secretary, Maine Retirement System

Re: Status of Employees of Soil Conservation Districts

Facts:

Revised Statutes, chapter 34, creates a state soil conservation committee and soil conservation districts. By statute, the districts "constitute an agency of the state and a public body corporate and politic." The districts are given authority to employ personnel, if and when funds are available.

Question:

Are the employees of a soil conservation district eligible for membership in the Maine State Retirement System?

Answer:

Yes.

Reason:

The retirement law, chapter 63-A, sets forth, in general, three classes of persons who are eligible for membership.

1. Regular classified or unclassified officer or employee in a department. C. 63-A § 1, "employee."

2. Teachers in the state teachers colleges and public schools. *C. 63-A § 1*, "employeee."
3. Employees of any county, city, town, water district, public library corporation or any other quasi-municipal corporation, civilian employees of the Maine National Guard, or of the Maine Municipal Association. *C. 63-A § 17*.

A department is defined as "any department, commission, institution or agency of state government" *C. 63-A, § 1*, "department."

"A soil conservation district organized under this chapter shall constitute an agency of the state" *C. 34, § 7*.

Hence, it follows that a soil conservation district being an "agency of the state" is a "department" within the definition in *C. 63-A, § 1*, and its employees are eligible for membership in the Maine State Retirement System.

GEORGE C. WEST

Deputy Attorney General

May 12, 1964

To: Governor John H. Reed

Re: Sardine Tax Law

Facts:

A sardine packer has asked you about the possibility of packing sardines for export only. Such sardines would be packed in a can of the approximate size of the familiar sardine can. The only difference in size would be a difference in depth between .913" ($\frac{1}{4}$ size can) and .788" (proposed can). The length and width would be identical. The packer proposes to pack $3\frac{1}{4}$ oz. contents.

The can would be labeled "sardines" but would also state "for export only." The packer wishes to be relieved of the tax of \$0.25 a case placed on the privilege of packing sardines.

Question:

Does the changing of the depth of a can by .125" and packing $3\frac{1}{4}$ oz. contents remove the can from the sardine tax?

Answer:

No.

Opinion:

The particular tax law is chapter 16, and particularly the definition in section 261, I. This subsection defines a "case of sardines" as:

"I. 100 one-quarter size cans of sardines"

A very full and complete discussion of this law is contained in the case of *State of Maine v. Vogl*, 149 Me. 99. In that case the Riviera Packing Co. unsuccessfully sought to avoid the same tax by circumventing the definition of section 261, III. That subsection defines "15-ounce oval cans." The Riviera sought to pack what it called a "1# oval." It used the same can but sought to pack 1# contents. The court said:

"It is the opinion of the court that there can be no valid reason to doubt what was the intention of the Legislature. The statute