

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

set at 46%. Prior to the issuance of bonds by the district, the directors borrowed funds to meet construction expenditures as they became due; and this was done by the district in anticipation of receiving state aid. Had the lump sum payment plan remained in the statutes, the district would have issued bonds totaling \$1,080,000 representing 54% of the \$2,000,000 total cost figure of the school; and the State would have paid the district \$920,000 representing 46% of the cost of the project.

QUESTION:

Whether or not the interest paid on the district's temporary borrowing prior to its sale of bonds is reimbursable as a capital outlay expenditure ?

ANSWER:

Yes.

REASON:

According to the provisions of 20 M.R.S.A. § 3457, school administrative districts are to report capital outlay expenditures to the Commissioner of Education, which expenditures shall include " * * * the amount of interest to be paid each year and the rate of interest * * * ." On the basis of all the reports on file in the office of the Commissioner of Education, state aid for school construction is paid to eligible administrative units, " * * * including principal and interest payments * * * ." The language of the Maine Statutes relating to public education intends that the amount of interest paid on temporary borrowing by a school administrative district be reimbursable as are other capital outlay expenditures.

It is true that the subject school administrative district was obligated to fund 54% of the cost of the project (\$1,080,000) and that the State, according to the appropriate Maine Statutes relating to state aid for school construction, was responsible for funding the remaining 46% of the project (\$920,000). However, capital outlay expenditures are defined in the statutes relating to public education, and we find no basis in the law for a determination that capital outlay expenditures may be the district's "share" at one time, and the State's "share" at another time.

In the event that state aid is paid to this particular district recognizing that the district has incurred interest due to temporary borrowing, then this extent of payment of state aid re interest will be no different from the manner in which state aid has been paid for interest on borrowing for school construction in the past; as well as for interest on borrowing for present school construction.

JOHN W. BENOIT, JR.
Assistant Attorney General

January 16, 1969

Honorable Louis Jalbert
House of Representatives
State House
Augusta, Maine

Re: Transferability of Longevity and Sick Leave Credits

Dear Representative Jalbert:

The following opinion is written in response to your inquiry.

SYLLABUS:

When a former unclassified employee is employed as a classified employee after a break in State service, there is a basis in law for denying the transfer of sick leave credits. The first longevity step will be earned after 5 years of continuous service in the classified position provided there is 8 years combined employment in unclassified and classified positions.

FACTS:

The following fact situation was presented to this office for a ruling:

An employee of Gorham State College was granted a leave of absence, without pay. During the leave period, the employee's position was abolished, thus placing employee on layoff status.

Same employee subsequently employed at Baxter School for the Deaf and was denied longevity and sick leave credits of approximately 18 years of State service. In fact, the employee became a NEW State employee in the classified service according to Personnel Law and Rules as interpreted.

On the basis of the foregoing facts, the question was posed, "Is there basis in law for denying the transfer of longevity and sick leave credits from unclassified State service into classified State service?" Also an inquiry was made as to the transfer of vacation credits.

Subsequent to the given facts, these additional facts have been ascertained:

1. At the time the employee requested a leave of absence effective December 26, 1964, the Gorham State Teacher's College (now Gorham State College) agreed to grant the leave of absence.

2. On January 8, 1965, the Education Department by written memorandum informed the Administrative Assistant of Gorham State Teacher's College (now Gorham State College) that a leave of absence may not be given for the convenience of an employee and it was necessary to terminate the employee's services.

3. Within a very short time thereafter, the Administrative Assistant orally informed the former employee, who at the time he was so informed was an acting postmaster for the Town of Gorham, that a leave of absence was no longer possible and that his services were effectively terminated.

4. Payment was made for the accumulated vacation time administratively granted.

5. On September 28, 1967 the former employee began work at a classified position for the Baxter School for the Deaf.

QUESTION:

Is there a basis in law for denying the transfer of longevity and sick leave credits?

ANSWER:

See Opinion.

OPINION:

Employees of Gorham State College are in the unclassified service, 5 M.R.S.A. § 711, subsection 8, as amended. A member of the unclassified service does not carry benefits under the Personnel Rules. However, longevity increases were afforded to both classified and unclassified employees pursuant to Chapter 202 of the Private and Special Laws of 1963. The longevity required for a first longevity increase is a total of 8 years' employment with the last five years continuous service, and for the second longevity increase a total of 15 years' service with the last 10 years continuous.

Under the present fact situation there was a break in State service. A classified employee when there is a break in service would not, upon re-entering the classified service, be entitled to his longevity steps he had earned under a longevity policy approved by the State Personnel Board on October 17, 1963. The ninth paragraph of this policy states:

"Any employee receiving longevity steps will lose such eligibility upon a break in service. The reemployment rate cannot exceed the maximum regular step for the class of employment."

However, after 5 years he would be entitled to his first longevity step.

Section 3 of Chapter 202 of Private and Special Laws of 1963 (the act giving longevity to State employees) requests the authorities responsible for establishing wage rates of unclassified employees not subject to determination by the Governor and Executive Council, to consider similar and equitable treatment as they conclude is appropriate. Therefore, if similar treatment were given to the unclassified employee, he would not be eligible to retain the longevity he had previously earned. However, after 5 years he would be entitled to his first longevity step, just as would a classified employee.

In respect to sick leave credits, the Personnel Rule, Section 11.8, fourth paragraph, provides:

"A former state employee who is reappointed within four years of his separation from the service under the provisions of the personnel law and these rules, with probationary or permanent status, may have his previously accumulated and unused balance of sick leave revived and placed to his credit upon approval of the new appointing authority."

Pursuant to this paragraph a classified employee can only obtain credit for accumulated and unused sick leave with the approval of the new appointing authority. Therefore, there is a basis in law for denying the transfer of sick leave credits.

Respectfully,

JEROME S. MATUS
Assistant Attorney General

January 17, 1969
Bureau of Taxation

To: Ernest H. Johnson, State Tax Assessor

Subject: Treatment of Joint bank accounts for inheritance tax purposes.