

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

sticker. It will be necessary that the names be spaced in such a manner that they appear directly to the left of the square in which the voter must insert a cross or a check mark in accordance with the instructions set forth at the top of the ballot in accordance with section 701, subsection 2 A.

If the sticker is printed properly, there is no reason why the one sticker carrying the name and the residence of each of the six candidates cannot be used.

GEORGE C. WEST
Deputy Attorney General

June 15, 1970
Aeronautics

Linwood F. Wright, Director

“Authorized representative of a political subdivision; Aeronautics; ‘School Teacher’ ”.

SYLLABUS:

A public school teacher is not an “authorized representative” of the city where the teacher is employed, within the meaning of 6 M.R.S.A. § 12, so as to permit the Aeronautics Director to grant funds to that teacher in furtherance of the teacher establishment of an aeronautics course of study.

FACTS:

The provisions of 6 M.R.S.A. § 12 permit the Director of Aeronautics to “advance the interest of aeronautics” in the State by, among other things, “assisting and advising authorized representatives of political subdivisions within the State in the development of aeronautics * * *”. The provisions of 6 M.R.S.A. § 162 create an airport construction fund to be utilized, inter alia, to “Develop and promote aviation within this State”. 6 M.R.S.A. § 162.

A public secondary school science teacher in a city (not involving a school administrative district) seeks assistance from the Aeronautics Director to establish an aviation course at the school where he is employed; and if this is possible under 6 M.R.S.A. § 12, then the companion question involves the source of funds for such assistance. The teacher requests a grant of funds to subsidize his education as a condition precedent to establishing the aeronautics course in the school program.

QUESTIONS:

1. Would a public secondary school science teacher in a city be considered an authorized representative of a political subdivision within the meaning of 6 M.R.S.A. § 12?
2. If so, can the Director legally grant moneys to the teacher from the fund appropriated under 6 M.R.S.A. § 162?

ANSWERS:

1. No.
2. Since the answer to question No. 1 is negative, no response is necessary on question No. 2.

REASONS:

The reference teacher is employed by a city in the State; and the city is considered to be a political subdivision of the State. In *Burkett v. Youngs, et al.*, 135 Me. 459, 199 A. 619, the City of Bangor was declared a "territorial and political division of the State of Maine". *Id.*, p. 465.

It is necessary to next perceive whether a public secondary school teacher is an "authorized representative" of the city wherein he is employed, within the meaning of 6 M.R.S.A. § 12. Employment of teachers under Maine law is governed by 20 M.R.S.A. § 161, 5; the Superintendent of Schools nominates the teacher or teachers proposed to be employed. The local school board or directors (if a school administrative district) approve or disapprove the nomination or nominations and employment of the teacher or teachers so approved. This employment rests upon the superintendent. *Michaud v. Inhabitants of St. Francis*, 127 Me. 255, 143 A. 56. Clearly, under our laws, the public school teacher possesses rights accruing out of contract.

The occupation of a public school teacher is not that of a public officer though the employment be in a public capacity; instead the position is that of employee resting on contract. *Mootz v. Belvea*, 60 N.D. 741, 236 N.W. 358, 75 A.L.R. 1352. In *Whitney v. Rural Independent School Dist. No. 4*, (Iowa) 4 N.W. 2d 394, 140 A.L.R. 137, the court decided that a public school teacher was not a person holding "an official position, or standing in a representative capacity of the employer" within the meaning of a workman's compensation act. We invoke an analogy here; viewing public school teachers not to be a city's "authorized representative" possessing standing to do business with the Aeronautics Commission under 6 M.R.S.A. § 12. Admittedly, a teacher performs duties which are public or quasi public in character, this is not sufficient to create a municipal public office in the sense described in 30 M.R.S.A. § 1901, 7, 8:

"7. Municipal officers. 'Municipal officers' means mayor and aldermen of a city, and the selectmen of a town.

"8. Municipal official. 'Municipal official' means any elected or appointed member of a municipal government."

Any grant of funds by the Director to the reference teacher might well result in the doing of a vain thing because in the final analysis, the local school board "directs the general course of instruction"; thus, the establishment of the proposed aviation course of instruction. 20 M.R.S.A. § 473, 2. While the members of a city's school board are thought to be municipal officials of the city, 30 M.R.S.A. § 1901, 8; 20 M.R.S.A. § 471, 472, 476, the employees of the board are not.

JOHN W. BENOIT, JR.
Deputy Attorney General

June 25, 1970
Education

Keith L. Crockett, Secretary-Treasurer
Maine School Building Authority

Town's Method of Voting upon Articles Prepared by Maine School Building Authority;
Secret Ballot.