

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

“Sec. 6.
“Mental Health and Corrections, Department of
Boys Training Center
Diagnostic Unit

\$375,000”

The Legislature with reference to the use of proceeds from that portion of the Bond Issue designated for construction at the Boys Training Center refers to “Diagnostic Unit.” We consider this language to refer more to the ultimate function for which the constructed facility is to be used than to the location or physical attributes of the proposed construction. We have addressed ourselves, from time to time, to similar questions with reference to the use of proceeds from General Fund Bond Issues, e.g., an Opinion of this office was issued on December 11, 1969, with reference to the use of proceeds from a General Fund Bond Issue, wherein the Legislature made specific reference to an “Addition Gould Academic Building.” We express the opinion, in connection with the last quoted language, that General Fund Bond Issue proceeds were required to be expended upon construction of the specified building addition.

We do not find such restrictive language in P&SL 1970, chapter 240. The Legislature has not provided for the construction of a particular building or an addition thereto, or renovations thereof, but has spoken in terms of a “Unit” to be used for an institutional purpose, i.e., “Diagnostic.” We do not find a departure from the intended purpose of the General Fund Bond Issue Act in the proposed use of the proceeds from the Bond Issue in the construction of a building and the alteration of a portion of the Security and Infirmary Building, wherein the composite of such construction and alteration, upon completion, will be the “Diagnostic Unit” at the Boys Training Center. Such construction and alteration shall, of course, be accomplished through the expenditure of not more than the amount of \$375,000 allocated by the Legislature for the Boys Training Center “Diagnostic Unit.”

COURTLAND D. PERRY
Assistant Attorney General

April 23, 1971
Maine State Retirement

Edward L. Walter, Ex. Secretary

Creditable Service for Service to Parochial Schools & Academies

SYLLABUS:

Public School teachers, after completing 10 years of service in public schools in this State, may purchase up to 10 years of creditable service for their service in parochial schools or public or private academies provided that the service was performed in parochial schools or academies located within this State.

FACTS:

Relying on 5 M.R.S.A. § 1094 subsection 14, a public school teacher, who has had more than 10 years of service in public schools in this State, has made application with the Retirement System for permission to purchase credit for service performed in and out-of-state parochial school.

QUESTION:

Whether, pursuant to 5 M.R.S.A. § 1094 subsection 14, a teacher who has rendered service in an out-of-state parochial school may include those years of service, after payment, as creditable service.

ANSWER:

No.

REASON:

The first two sentences of 5 M.R.S.A. § 1094, subsection 14 provide:

“Private and parochial school credit. Any public school teacher who rendered teaching service in any parochial school or public or private academy may purchase up to 10 years creditable service. Such service credit to be creditable must have been performed in a school approved by the State Department of Education while holding the appropriate teaching certificate during the time of said non-public school service, and such prior service credit can only be secured after 10 years of service in the public schools”

The requirement that the service be performed in a parochial school “. . . approved by the State Department of Education while holding the appropriate teaching certificate during the time of said non-public school service” necessarily implies that the non-public school be located within this State.

The State Department of Education does not have jurisdiction over schools beyond the borders of this State and any “appropriate teaching certificate” issued in this State would not necessarily entitle one to teach in an out-of-state school.

If the Legislature intended to extend the benefits of this State’s Retirement System to service performed by a then out-of-state employee it should do so with clear and express language. Absent any such expressed intent of the Legislature it must be presumed that the legislatively expressed purpose of the Retirement System, to wit; “. . . for the purpose of providing retirement allowances and other benefits under this chapter for employees of this State”, was to apply to service performed by state employees while they were employees within this State.

In conclusion, the service performed in an out-of-state parochial school may not be considered teaching service for purposes of 5 M.R.S.A. § 1094 subsection 14.

CLAYTON N. HOWARD
Assistant Attorney General

April 27, 1971
Environmental Improvement Comm.

George C. Gormley, Chief
Bureau of Water Pollution Control

Eligibility of Residents of Unorganized Territory for Preliminary Planning Grants.

SYLLABUS:

Residents of unorganized territory are ineligible under 38 M.R.S.A. § 412 to receive grants from the Environmental Improvement Commission for preliminary planning of pollution abatement facilities.