

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

made for eligibles under § 1124(2), the law also gives to certain beneficiaries, or the members' estate, all of those benefits which would be available if the member had not been eligible for retirement. In such a case section 1124(3) permits designated beneficiaries to elect to take their benefits under § 1124(1) or under § 1124(2).

Section 1124(3) states in this regard that:

“ . . . The designated beneficiary if a spouse . . . may elect to receive either the benefits provided under subsection 1 or those provided under subsection 2, paragraph A or B but not both.”

In the present case the designated beneficiary wishes to elect to receive the benefits provided for under subsection 1, paragraph B, subparagraph (1). However, subparagraph (1) requires as a condition of eligibility that one have had at least 18 months of creditable service within the 42 months prior to date of death. The deceased member here involved did not meet that requirement.

The question here presented is whether a member must have met the requirements of subsection 1 B(1)(a) before his beneficiary may elect those benefits. More specifically, the question is whether the deceased member must have met the 18 months of creditable service before his beneficiaries may elect to receive the \$100 monthly benefits provided for under § 1124 1 B(1)(a).

Obviously the earlier-quoted language of subsection 3 does not expressly impose the conditions of subsection 1 on one electing the benefits thereof.

To imply that any election of the benefits of subsection 1 must be conditioned upon the limitations of that subsection would be to imply a limitation inconsistent with the general purposes of § 1124.

Subsection 3 provides a means whereby one eligible for retirement may obtain the benefits of one not eligible. If one were eligible to retire and had also met all of the conditions of subsection 1, then his beneficiaries would also be entitled to the benefits of that subsection without the authority of subsection 3. If subsection 3 is to be given any meaning and if the general principle of bestowing additional benefits on those eligible for retirement is to be furthered, then an election under subsection 3 must not be conditioned upon fulfilling the limitations of subsection 1.

In conclusion, one may elect under § 1124(3) to receive the benefits of § 1124 1B (1)(a) without having first completed 18 months of creditable service.

CLAYTON N. HOWARD  
Assistant Attorney General

December 17, 1971  
Education

Asa A. Gordon, Ass't. Commissioner,  
School Admins. Services

School Committee's Acceptance or Rejection of High School Tuition Students.

*SYLLABUS:*

Whether a school committee must comply with a vote of the administrative unit that certain tuition students be accepted is not a State question. When voters of an

administrative unit elect not to receive tuition students in the future, the sending administrative units are entitled to notice of the fact and tuition students must be received over the next two years before discontinuance, provided the receiving unit qualifies for school construction aid under 20 M.R.S.A. § 3457.

*FACTS:*

Section 9 of Chapter 223 of the Public Laws of 1971 is as follows:

“Whenever authorized by the appropriate legislative body, the school committee or school directors may accept students from outside the administrative unit, and the sending unit or family shall pay such tuition as may be fixed by such committee or directors not to exceed legal tuition rates.”

Section 35-A of Chapter 530 of the Public Laws of 1971 amended the second sentence of the second paragraph of § 3457 of Title 20 to read as follows:

“Any administrative unit qualifying for school construction aid under this section which receives tuition students from surrounding municipalities must render at least 2 years’ notice to the sending municipalities before discontinuing such acceptance.”<sup>1)</sup>

Your memorandum suggests as fact that an administrative unit votes to authorize its school committee to accept students only from a specified municipality. It is also assumed that several municipalities are presently sending tuition students to the receiving town in question.

*QUESTIONS:*

1. May the school committee of the receiving administrative unit refuse to accept any tuition students at all on the grounds that the vote of the unit was only an authorization to the school committee, not a directive to the school committee?

2. May the school committee of the receiving administrative unit exclude freshmen tuition students for the school year 1972-73 before the expiration of the 2-year period specified in § 3457, as amended by P.L. c. 530, § 35-A?

3. In the absence of a notice of discontinuance of tuition students to sending administrative units by the receiving administrative unit, is a school committee of the receiving administrative unit, which unit receives school construction aid, obliged to accept all tuition students until the expiration of the 2-year period has been realized?

4. When a receiving administrative unit votes not to accept high school tuition students, is the school committee of the receiving administrative unit required to give a notice to the sending administrative units forthwith?

*ANSWERS:*

1. Not a State question.
2. No.
3. Yes.
4. Yes.

1) The request for advice does not seek a definition of the phrase “2 years’ notice”; if it had, we would interpret it to mean a period of two school years, as opposed to two calendar years.

*REASONS:*

1. The first question does not present a State issue for consideration. In the event that the voters of an administrative unit authorized their school committee to accept tuition students only from a specified sending administrative unit, and the school committee refused to accept those tuition students, the controversy would be one which required attention of counsel representing the board and the administrative unit. If this office were to give advice on such a question, it would not be in a position to support that advice by representing either the administrative unit or the school committee.

2. In answer to the second question, a school committee of an administrative unit receiving tuition students must continue to receive such students until the expiration of a 2-year period following notice given to the sending administrative units that tuition students will not be received thereafter. The Article to be voted upon should be aimed at notification of discontinuance of tuition pupils rather than to immediate discontinuance. Note that the reference notification to the sending administrative units must be given if the receiving administrative unit qualifies for school construction aid under the provisions of 20 M.R.S.A. § 3457; and the answer we give to the second question only goes to the extent of the facts assumed, i.e., that the receiving administrative unit qualifies for school construction aid.

3. What is written in the previous paragraph supports the answer to question No. 3.

4. Question 4 is really one of administration of the school committee (and may well depend upon the time when the voters of the administrative unit direct their school committee not to accept tuition students). The notice of discontinuance of acceptance of tuition pupils should be given to the sending administrative units as soon as possible so as to inform the sending administrative units of the remaining 2-year period during which they may continue to send students to the receiving unit.

JOHN W. BENOIT, JR.  
Deputy Attorney General

December 22, 1971  
Executive

Governor Kenneth M. Curtis

Retirement of Judges; Meaning of "Consecutive Years" in 4 M.R.S.A. § 103.

We acknowledge receipt of the inter-departmental memorandum submitted to this office by your Department under date of December 22, 1971 requesting an opinion as to the meaning of the phrase "consecutive years" appearing in Title 4, Section 103. The reference phrase appears in the first sentence of Section 103 of Title 4 as follows:

"Any Justice of the Superior Court who resigns his office or ceases to serve at the expiration of any term thereof, after attaining the age of 70 years and after having served as such Justice for at least 7 consecutive years, or after attaining the age of 65 years and after having served as such Justice for at least 12 consecutive years, shall receive annually during the remainder of his life an amount equal to  $\frac{3}{4}$  of the currently effective annual salary of a Justice of the Superior Court, to be paid in the same manner as the salaries of the Justice of said Court are paid. \* \* ."

The memorandum from your Department seeks the meaning of "consecutive years" and asks whether eligibility for retirement compensation requires uninterrupted service or whether eligibility may be maintained even though a lapse of time occurred between reappointments, provided the lapse occurred only within the next calendar year or a 12-month period following the end of the prior term of office.