

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

attendance to any nonpublic secondary school and *for the purposes of tuition* to any nonpublic secondary *boarding* school which is so accredited.

REASONS (NO. 3):

Section 911 of Title 20 provides, in part, that,

“necessary absence may be excused by the superintending school committee, school directors or superintendent of schools or teachers acting by the direction of either. Such attendance shall not be required if the child obtains equivalent instruction, *for a like period of time*, in a private school in which the course of study and methods of instruction have been approved by the commissioner . . . ”

(Emphasis supplied)

As previously noted in connection with both Questions 1 and 2, section 1281 of Title 20 requires that all schools approved for attendance, tuition or subsidy purposes must maintain a minimum school year of 180 school days, of which not less than 175 shall be actual school days. Assuming that the public schools which these pupils would attend, but for their parents sending them elsewhere, would all be approved schools under the provisions of section 1281, this opinion is based upon the reasoning that the above-emphasized phrase, “*like period of time*”, in section 911, means a period of time which is at least equal to the 175 actual school days per school year which is required for basic approval under section 1281. Therefore, in order for pupils to be excused under section 911 from attendance at their local public schools, they must attend a school which, among other things, maintains a school year of not less than 175 actual school days.

CRAIG H. NELSON
Assistant Attorney General

March 24, 1972

James C. Schoenthaler, Chairman

Your Memo of March 23, 1972, Requesting Legal Opinion

SYLLABUS:

Maine Employment Security Commission may make an increase in contribution rates effective for the calendar quarter in which it finds an emergency exists such as to seriously impair the unemployment compensation fund, and in which it imposes the increase after reasonable notice and public hearing on the matter, as provided in Section 1221, subsection 4, paragraph C of the Maine Employment Security Law (T. 26, Chapter 13, M.R.S.A. 1964, as amended). For such action to be authorized during calendar year 1972, the amount in the unemployment compensation fund must be under \$15,000,000.

FACTS:

“Contributions” means the money payments to the State Unemployment Compensation Fund required by the Maine Employment Security Law (Section 1043, subsection 8).

Section 1221, subsection 1, paragraph A of the law provides that contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter, and that such contributions shall become due and be paid in accordance with such regulations as the Commission may prescribe.

Commission Regulation 4, section 1, paragraph A provides that contributions shall be due and shall be paid on or before the last day of the month following the close of the calendar quarter for which the contributions have accrued.

Commission Regulation 4, section 1, paragraph B provides that each quarterly payment shall include contributions with respect to wages for employment paid within the calendar quarter.

Section 1221, subsection 2 contains provisions relative to the percentage of taxable wages to be paid, except as prescribed in subsection 4.

Section 1221, subsection 4, paragraph B contains a chart from which an employer's contribution rate is determined, based on his experience rating record as determined in the same paragraph, which contribution rate varies with the amount of money in the Unemployment Compensation Fund, as set forth in the chart under columns lettered A to F inclusive. By virtue of a specific provision in said paragraph B, the contribution rates presently in effect are those contained in Column F.

Paragraph C of the same subsection reads as follows:

"C. If at any time, from January 1, 1972 to December 31, 1972, the net balance available for benefit payments equals or is less than \$15,000,000, or from January 1, 1973 to December 31, 1973 the net balance available for benefit payments equals or is less than \$17,500,000, or on and after January 1, 1974 the net balance available for benefit payments equals or is less than \$20,000,000; and, in the opinion of the commission, an emergency exists such as to seriously impair the fund, the commission may, after reasonable notices and public hearing, *forthwith impose* the rates shown in column F of the schedule carried in paragraph B and, in addition thereto, increase such rates by not more than .5% and continue said rates, and additions thereto, in force until, in the opinion of the commission, such emergency no longer exists, or until the date set by this chapter for the computation of rates, whichever is earlier." (emphasis supplied).

On the date this opinion is being written, the unemployment compensation fund is under \$15,000,000.

QUESTION:

Your memorandum of March 23, 1972, asks the following question:

"Under the circumstances and for the periods set forth in Section 1221,4,C of the Employment Security Law the Commission has authority to increase contribution rates. Would this authority allow such an increase in rates to be effective for the first quarter of 1972? In addition, would this authority allow such an increase in rates to be retroactive to January 1, 1972, if implemented in the second, third, or fourth quarter?"

ANSWER:

We break the question into two parts, and we answer each part:

1. Would the authority allow an increase effective for the first quarter of 1972?

Answer: Yes, within limitations expressed in the following section headed *Reasons*.

2. Would the authority allow an increase, retroactive to January 1, 1972, if

implemented in the second, third, or fourth quarter?

Answer: No.

REASONS:

Inasmuch as the rates set up in column F, previously referred to, are already in effect, the only action open to the Commission would be to increase those rates up to .5% if in its opinion an emergency exists such as to seriously impair the Unemployment Compensation Fund.

Obviously, the purpose of the provision for imposing such an increase is to prevent endangering the status of that fund and it should be construed so as to best accomplish that purpose. The statute states that after public hearing the Commission may *forthwith impose* the increase in rates under discussion.

BLACK'S LAW DICTIONARY, Revised Fourth Edition, defines *forthwith*:

"Forthwith. Immediately; without delay, directly, hence within a reasonable time under the circumstances of the case; promptly and with reasonable dispatch . . . Within such time as to permit that which is to be done, to be done lawfully and according to the practical and ordinary course of things to be performed or accomplished."

Under Commission regulations, computation of contributions due is on wages paid during a calendar quarter. Such computation must be on the basis of the rate applicable to the quarter involved.

It is our opinion that if, during the current calendar quarter, the Commission is of the opinion that an emergency exists such as to seriously impair the fund, it may – within the current calendar quarter – after reasonable notices and public hearing, impose up to .5% increase in the rates shown in aforesaid column F, to be effective for the calendar quarter ended March 31, 1972.

In view of the limitations stated in our opinion relative to the current calendar quarter, it follows that it is our opinion that action under Section 1221, subsection 4, paragraph C resulting in increases in rates up to .5% can be made effective no earlier than for the quarter in which all necessary action has been taken.

FRANK A FARRINGTON, Assistant Attorney General
MERRILL A. TRACEY, Assistant Attorney General

April 7, 1972
Education

Asa A. Gordon, Asst. Comm. School Adm. Serv.

Computation of General Purpose Aid

SYLLABUS:

A corrected and final biennial computation of general purpose aid under Title 20, M.R.S.A. § 3732, must be based upon the certified state valuation for the same ensuing biennium which the State Tax Assessor is required by Title 36, M.R.S.A. § 381 to file before the first day of February of each regular legislative session.