

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

express proviso in 5 M.R.S.A. § 1092, subsection 11.

It is apparent from Chapter 101 of Title 5 of the Revised Statutes that employment in several different departments of the State of Maine constitutes employment with the *same* employer. It is equally apparent that employment by a local participating district constitutes employment by a new employer vis-a-vis the State.

Accordingly, since subject individual withdrew his contributions for membership in the System after termination of his employment with the State, he cannot upon his re-employment by a *new* employer, i.e., the participating local district, obtain a transfer of his former membership credit to his new membership account.

CHARLES R. LAROUCHE
Assistant Attorney General

April 11, 1972
Education

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

Cooperative Agreements under Title 20 M.R.S.A. § 309

SYLLABUS:

A cooperative agreement under the provisions of Title 20 M.R.S.A. § 309 may not be utilized to carry out, as a specified educational function, the construction and operation of a school.

FACTS:

Chapter 276 of the Public Laws of 1971 authorized municipalities to enter into cooperative agreements for carrying out "specified educational functions." Under the provisions of section 309, which was added to Title 20 along with sections 309-A and 309-B by chapter 276, the State Board of Education is required to prepare a cooperative agreement, upon application of two or more municipalities, for submission to the voters of the municipalities involved, which agreement shall contain the conditions under which the specified educational function may be carried out.

QUESTIONS:

(1) May a cooperative agreement be prepared and entered into, under the provisions of Title 20, M.R.S.A. § 309, to carry out, as a "specified educational function," the construction and operation of a school?

(2) Would a project for the construction of a school, which is carried out by means of a cooperative agreement prepared and entered into pursuant to the provision of Title 20 M.R.S.A., § 309, be eligible for State School construction aid under Title 20 M.R.S.A., § 3457?

ANSWERS:

(1) No.

(2) The answer to question 1 obviates an answer to this question.

REASONS:

Title 20 M.R.S.A. § 309 provides in pertinent part, that,
“the school committees or boards of directors of various administrative units may file an application with the State Board of Education for the purpose of entering a cooperative agreement to carry out a *specified educational function*. The application shall be in a form and containing such information as required by the board. An agreement so applied for *shall* be submitted to the citizens of each unit for acceptance or rejection.” (Emphasis supplied)

Although it would seem from the above quoted provisions that, if an application for the purpose of entering a cooperative agreement sets forth the “specified educational function” to be accomplished and is in the form and contains such information as required by the Board, the State Board of Education must prepare the cooperative agreement for submission to the citizens of each administrative unit involved for acceptance or rejection, it must first be determined in each case whether the proposed cooperative venture is a proper “specified educational function” which the Legislature intended should be carried out by means of a cooperative agreement. Unfortunately, no specific definition of the key phrase, “specified educational function,” is given in either section 309 or in any other section of Title 20. It does appear, however, from the provisions of the second paragraph of section 309, that the “specified educational functions” that are to be carried out by cooperative agreement must be capable of being funded and budgeted for on an “annual” basis. This requirement for annual funding and budgeting of cooperative ventures would seem to preclude the construction of a school by means of a cooperative agreement.

Furthermore, when section 309 of Title 20 was enacted, the provisions of Title 20, Chapter 11 (§§ 351-360) had already been in existence, in substantially the same form, for some 24 years. These provisions of Chapter 11 contain specific procedures whereby two or more towns or administrative units may combine their resources by forming, organizing and operating a Community School District for the purpose of constructing and operating a school or schools.

In view of the fact that the Legislature is presumed to have been aware of the existence of chapter 11 when it enacted section 309, it would not seem reasonable to construe the provisions of that section as being intended by the Legislature to provide a second procedure for accomplishing the same purposes. Instead, it would appear that this newly enacted section was intended for use in carrying out specific educational projects and programs that are more limited, in scope and function, than the construction and operation of an entire school.

CRAIG H. NELSON
Assistant Attorney General

April 19, 1972
Adjutant General

E. W. Heywood, Adjutant General

Adjutant General – Group Life Insurance

SYLLABUS:

State funds may not be used by the Adjutant General to pay the premiums for life