

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date October 6, 1977

To W. G. Blodgett, Executive Director Dept. Retirement System

From Kay R. H. Evans, Assistant Dept. Attorney General

Subject Eligibility of Teachers under York County Special Education Compact (Chapter 43, Resolves of 1977) to become members of the M.S.R.S. as public school teachers

Your memo of September 14, 1977, requests an opinion whether certain employees of the York County Special Education Compact are eligible to become members of the Maine State Retirement System. In my opinion, on the basis of the Legislative Resolve authorizing creation of the Compact, the provision of the Compact's Organizational Plan and the relevant provisions of the retirement law, teachers, teacher associates^{1/} and secretaries employed by the Compact are eligible for membership in the System.

OPINION

Chapter 43, Resolves of 1977, permitted "the local administrative units in York County . . . to prepare a plan to provide special education services . . . on a regional basis" and, on approval of the Commissioner of Educational and Cultural Services, authorized the actual provision of special education programs and services. Pursuant to the Resolve, the York County Special Education Compact was formed. The Compact functions under an Organizational Plan, of which the sixth paragraph provides that "programs . . . shall be operated according to the appropriate laws of the State and Federal governments as they apply to the operation of the schools of the member units." The organizational structure of the Compact consists of the Compact Board, comprised of the governing bodies of member administrative units and those units' superintendents of schools; an Executive Committee, consisting of four superintendents and five members of the governing bodies of the member administrative units, all nine of whom are elected by the Board; and an executive director, appointed by the Executive Committee. Appendices to the Organizational Plan outline the programs and services^{2/} to be offered.

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- 1/ No definition of "teacher associate" has been provided with your memo. This opinion proceeds on the assumption that there has been an administrative determination that this category of employee is eligible for membership, if these Compact employees are eligible at all.
 - 2/ The programs are classes and work-study programs for children with mental handicaps. The services are educational and related diagnostic, remedial and therapeutic services.

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Your question is whether teachers, teacher associates and secretaries^{3/} employed by the Compact are eligible for membership in the Maine State Retirement System. Membership is available to employees, 5 M.R.S.A. § 1091. "Employee," as defined at 5 M.R.S.A. § 1001(10), includes teachers in public schools. "Teacher," as defined at 5 M.R.S.A. § 1001(25), includes the categories of employee about whom you have inquired, if they are "employed in any public school." Thus, the issue is whether the Compact constitutes a public school. "Public school" is defined for the purposes of the retirement law as

. . . any public school conducted within the State under the authority and supervision of a duly elected board of education, superintending school committee or school directors
5 M.R.S.A. § 1001(18)

The Compact is clearly an arm, or arms, of the several administrative units by which it was constituted, is managed, and whose taxpayers and children it serves. It offers programs and services which could be provided by each of its member school units. Whether the Compact is considered a public school in its own right, or an administrative extension of several public schools, whose employees are ultimately the employees of the school units which provide structure, funding and management, there is no reasonable basis for exclusion from the Act's definition of "public school." The Compact is, by the terms of its Organizational Plan, under the authority and supervision of duly elected public school managers, notwithstanding that that authority and supervision is channeled and exercised in a unique manner. Accordingly, I conclude that the York County Special Education Compact falls within the relevant definitions of the retirement law, so that teachers, teacher associates and secretaries employed by the Compact are eligible for membership in the Maine State Retirement System.



KAY R. H. EVANS
Assistant Attorney General

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3/ The Compact teacher aids are excluded by virtue of the decision of the Board of Trustees of the retirement system to exclude all teacher aides.