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AUGUSTA, MAINE 04333

#79-59

March 29, 1979

Honorable Donald Strout
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Strout:

This is in response to the questions you submitted to the Attorney General's Office on February 27, 1979.

Your first two questions inquire as to whether the substance of 26 M.R.S.A. §621 may "be construed to compel a school administrative unit (School Committee) to pay off on demand the unpaid amount remaining on a teacher's contract at the end of the school year in June and whether §621 requires "weekly payment?" Additional information is needed before these questions may be answered. In particular, your request does not identify whether the unit in question is a school administrative district, community school district, vocational region or a single municipality. Although the provisions of §621 reach cities and towns which operate school systems, they do not appear to cover school administrative districts, community school districts, and vocational regions, which are quasi-municipal corporations responsible for operating public schools, and are, therefore, included within the definition of school administrative units. ["An administrative unit as referred to in this Title (Title 20) shall include all municipal or quasi-municipal corporations responsible for operating public schools." 20 M.R.S.A. §851.] The Legislature has specifically identified the type of employers covered by §621 to be "Every corporation, person or partnership engaged in" specified trades, "every incorporated express company or water company; and every steam railroad company or corporation . . . every county and city . . . (and) every town."

Section 621 further requires that each employee shall be paid "weekly . . . unless such . . . employee requests in writing to be paid in a different manner." Since the school administrative units in the State have contracts with their teachers, it is assumed that the teachers are paid in accordance with the provisions of those contracts and that those provisions do not necessarily provide for a weekly payroll. Therefore, the teachers in a school administrative unit are operating under a contract and the provisions of the contract would constitute a written request by the employees to be paid in a manner different from the weekly provision set forth in 26 M.R.S.A. §621. Although 26 M.R.S.A. §623 states that "No corporation, contractor, person or partnership shall by a special contract with an employee or by any other means except himself or itself from sections 621 to 624," the Legislature did not indicate that towns,

cities, and counties should be affected by the limitations of §623. In fact, the Legislature identified towns, cities, and counties separately from corporations, persons, or partnerships in §621 and thereby, did not intend that towns, cities, and counties would be included within the terms corporations, persons or partnerships as used in §§621-629.

Your third question inquires as to whether 5 M.R.S.A. §1006, sub-§3, may "be construed to mean that the evaluation of all teachers is now subject to collective bargaining" or whether the intent of the Legislature in §1006, sub-§3, is "limited to 'criteria and standards' for job termination only in lieu of a mandatory retirement age?" Sub-section 3 states that:

> "3. Criteria and standards. A state department or public school may establish reasonable criteria and standards of job performance to be used for the purpose of determining when employment of its employees should be terminated. Where there is a certified bargaining agent, the establishment of these criteria and standards may be a subject of collective bargaining. These criteria and standards shall be consistent for all employees in the same or similar job classifications, shall be applied fairly to all employees regardless of age and shall be consistent with the provisions of the Maine Human Rights Act relating to the employment of physically and mentally handicapped persons." (Emphasis supplied)

Section 1006 was enacted by P.L. 1977, Chapter 580, which is entitled "An Act to Prohibit the Practice of a Mandatory Retirement Age." Although section 2 of Chapter 580 enacted 5 M.R.S.A. §1006, sub-§3, sections 16 and 17 of Chapter 580 specifically amended the teacher employment law, 20 M.R.S.A. §161, sub-§5, to the effect that teachers 65 years of age and over are now treated the same as any other qualified teacher. Therefore, the intent of the Legislature in enacting §1006 was to prohibit a mandatory retirement age. Its intent in enacting sub-§3 was to limit the establishing of reasonable "criteria and standards of job performance" to those situations where a public employer would be unilaterally terminating an individual's employment.

The "criteria and standards of job performance" provision in 5 M.R.S.A. §1006, sub-§3, is also consistent with the provision in 20 M.R.S.A. §161, sub-§5, sentence 4, which states that "just cause for dismissal or nonrenewal may be a negotiable item in accordance with the procedure set forth in Title 26, Chapter 9-A, for teachers who have served beyond the probationary period." It appears the two provisions are interchangeable, although the "just cause" provision is the one usually used by the teaching profession. In any event, while the Legislature has authorized that either provision "may be a subject of collective bargaining," it has not required that either one be included in the bargaining process.

Respectfully yours,

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