

# MAINE STATE LEGISLATURE

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March 4, 1940

Jack B. Tate, General Counsel  
Social Security Board  
1712-G Street  
Washington, D. C.

Dear Sir:

The Maine State Personnel Board has submitted to this office a request for an opinion with respect to the status of certain matters arising under Chapter 221, P.L., of Maine, 1937 wherein such matters apparently are concerned also with policies, directions or rules promulgated from time to time by the Social Security Board ostensibly under the authority of Title (3) of the Social Security Act as amended.

Before issuing an opinion to the Personnel Board touch-  
int upon these matters, I feel that it is not only highly desirable  
but necessary for the future success of the personnel program  
that this State should be advised as to the legal authority by  
virtue of which the Social Security Board maintains its position  
in these matters.

First: I understand that the Social Security Board has  
directed the Maine State Personnel Board to conduct qualifying  
examinations for all persons employed by the Unemployment Comp-  
ensation Commission who entered the service of that Commission  
subsequent to July 24, 1937 and who did not take an open compet-  
itive examination conducted either by the State Personnel Board  
or by the Unemployment Compensation Commission for positions in  
the Employment Service or comparable positions.

Prior to January 1, 1940, Section 303 (a) (1) of the  
Social Security Act read as follows:

"Such methods of administration (other than those  
relating to selection, tenure of office, and com-  
pensation of personnel) as are found by the Board  
to be reasonably calculated to insure full payment  
of Unemployment Compensation when due."

This section has been amended effective January 1, 1940.

Jack B. Tate, General Counsel  
March 4, 1940  
Page 2.

If the Congressional amendment is valid, there can be no question as to the Social Security Board's right to maintain standards for personnel to be appointed subsequent to January 1, 1940. However, I should like to be informed as to the basis of the Social Security Board's right to order a qualifying examination for persons appointed to the service subsequent to July 24, 1937 and prior to January 1, 1940 when as a matter of provable fact, the personnel in a competent, capable and economical manner are paying "Unemployment Compensation when due".

Second: Under existing law, the Maine State Personnel Board has the duty of classifying positions, fixing a compensation plan and controlling promotions, demotions, etc. When a position has been classified in accordance with the laws of this State and when the compensation for such position has been fixed in accordance with the laws of this State and when an incumbent has been selected from an approved register to fill such position, all of which is done prior to January 1, 1940, by what authority does the Social Security Board refuse funds to pay the compensation established by the law of this State without first notifying the Maine State Personnel Board (not the Unemployment Compensation Commission, whose authority by law has been curtailed) and without furnishing to the Maine State Personnel Board its (the Social Security Board's) standards for the classification of such job and without giving to the incumbent of such position an opportunity to show his right to receive the compensation fixed in accordance with the due process of laws of this State.

Third: If personnel standards on a merit basis are established and maintained in accordance with the requirements of the Social Security Board and in accordance therewith persons are selected, inducted into office, and compensated accordingly; what assurance does the Maine State Personnel Board have that the rights thereby accruing to incumbents under the Maine State Personnel Law will not thereafter be seriously impaired or cut off by the adoption by the Social Security Board of new and different standards and resultant refusal to approve grants for the compensation of the incumbents.

It is believed that it may be possible to conduct the operations of the Maine State Personnel Board with respect to the personnel of the Unemployment Compensation Commission on a much more reasonable and proper basis, if we could have an authoritative opinion with respect to the principles raised by the foregoing queries.

Very truly yours,

Franz U. Burkett  
Attorney General