

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

July 15, 1942
Employees' Retirement System

To:
Earle R. Hayes, Secretary

From:
John Fessenden, Ass't Attorney General

In reply to your memorandum of July 8, 1942, the answers to your questions are as follows:

1. Contributions by employee members of the Retirement System should be made on the basis of base pay, plus the 10% increase allowed by the legislature. The State's contributions to the System should be made on the same basis.

2. Contributions by employee members in cases involving maintenance should be made on the basis of cash salary, plus the value of maintenance involved.

3. Under Paragraph 4 of Section 227c, the Board of Trustees may, by the exercise of its discretion, deny the right to become members to employees whose status as employees under the Personnel Laws and rules of the State is temporary. Since the laws of the State and the rules of the Personnel Board indicate that persons entering into the classified service are on a temporary basis until the probationary period has been served, the Board will have authority to deny membership until the employee is permanent.

4. The Board of Trustees has authority to establish a rule making a provision that seasonal or part time employees on other than a per annum basis may be admitted to membership with their creditable service being allowed on an accumulative basis. The only limitation upon this authority appears to be that no employee shall be given credit for a year's service when such year includes a period of absence without pay of more than a month's duration.

5. Members absent on leave without pay may continue their contribution if they so desire. It should be noted, however, that in the case of leave of absence without pay in excess of one month in any one year, the employee will not receive service credit nor will the State be required to make contributions even though the employee has continued to make his contribution.

July 15, 1942
Employees' Retirement System

To:
Earle R. Hayes, Secretary

From:
John Fessenden, Ass't Attorney General

In reply to your memorandum of July 10, you are advised that there is no statutory authority whereby in calculating prior service credit, employees of the State who served in the armed forces of the United States during World War I shall be given retirement credit for the time of their absence in the armed forces.

Any person employed by the legislature, who is regularly employed in a State department, commission, institution or other agency of the State, is eligible to become a member of the Retirement System. Legislative committee clerks and stenographers who are not otherwise regularly employed in a State department would constitute a class of employees who are serving on a temporary or other than per annum basis, whose entry into the System may be controlled by the discretion of the Board of Trustees.

July 16, 1942

From:
The Attorney General

To:
William D. Hayes, State Auditor

Thanks for returning my memo of June 19th, in reply to yours of May 8th in regard to the Deer Isle Bridge District. My conclusion was based on my understanding that the State of Maine did issue bonds under Chapter 133, Resolves of 1935, which became Section 21 of Article IX of the Constitution.

I have checked through the various statutes to see if we can safely reach the conclusion that the State Treasurer may make payments of interest and for retirement of the Bridge District bonds directly to the National Shawmut Bank of Boston, or to such other bank as may be the owner of the bonds, or acting as trustee or as collection agent for the bondholders.

In my opinion the State Treasurer cannot do this unless through the neglect of the Trustees there is an actual default in the bonds. If the default occurs then the State can step in and use such reasonable means as may be necessary to protect the bridge. This is because of the fact that the State has a very great interest in the bridge, and on the State officials is placed the duty and responsibility of handling and maintaining the bridge, collecting tolls and doing all things necessary to protect the bridge as a part of our highway system.

Apparently the next Legislature should be asked to amend the law so as to get rid of the Trustees entirely, or to provide that payments can be made directly to the bank without having to consider the Trustees.

FRANK I. COWAN
Attorney General