

MAINE STATE LEGISLATURE

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March 23, 1946

To Earle R. Hayes, Director
Employees' Retirement System

I acknowledge receipt of your memo dated March 19, 1946 stating that the Board of Trustees of the Employees' Retirement System have instructed you to secure a ruling from me at the earliest possible date as to whether or not the employees of the University of Maine are eligible to become members of the State Employees' Retirement System under the provisions of R. S. Chapter 60.

It is my opinion that the University of Maine employees are eligible to participate in the State Retirement Plan only as a participating local district under the provisions of §15 of Chapter 60, R. S. 1944, as amended by Chapter 101, P. L. 1945, for the reasons outlined in a former opinion which I rendered to the Board of Trustees last year concerning the effect of the provisions of Chapter 98, P. L. 1945 which provides:

"The University of Maine is declared to be an instrumentality and agency of the state for the purpose for which it was established and for which it has been managed and maintained under the provisions of chapter 532 private and special laws of 1865 and supplementary legislation relating thereto."

Confirming what I stated in a former opinion, the University of Maine is chartered by the State and fostered by the State, yet it is not a branch of the State's educational system, nor an agency, nor an instrumentality of the State only for the purposes for which it was established and for which it has been managed and maintained under the provisions of its charter and, as you know, the University of Maine has a legal entity wholly separate and apart from the State. I do not believe it was the intent of the legislature to place any part of the University of Maine's management and function under the control of any State Board at Augusta because, in 1945, the legislature had before it a bill relating to the State Employees' Retirement System known as L. D. 545 introduced by Mr. Payson of Portland. This Document contained the following: "All officials and employees of the University of Maine". This was a proposed amendment to sub section 4 of §1 of Chapter 60 of the Revised Statutes, which the Maine legislature rejected. It became law in a new draft which is now Chapter 291, P.L. 1945. This does not contain the amendment to sub section 4 of §1 which was in the original bill. For that reason I do not think it was the intent of the legislature to make all officials and employees of the University of Maine employees within the meaning of sub section 4 of §1 of Chapter 60, R. S. 1944 notwithstanding the enactment of Chapter 98, P. L. 1945.

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I advised the Trustees at the last meeting I attended that if the University of Maine employees were to come in, it would be on a voluntary basis under the provisions of §15 of Chapter 60, and if they were to come in under any other provisions of Chapter 60, legislative authority would be necessary.

I then asked the Trustees for the amount that would be necessary to be paid from the general funds of the State or the funds of the University of Maine for the cost of the pension requirement, including prior service credit, if the legislature saw fit to grant the authority as aforesaid. I also asked the Trustees what advantage the employees of the University of Maine would have in scrapping their present pension system if they should decide to come in under the participating local district plan. I also asked the Trustees what amount would be returned by the insurance company should the present pension system for the employees of the University of Maine cease, and also whether the University of Maine would donate the amount credited back to the University by the insurance company upon cancellation of its scrapped policy if the employees were to come under the State Retirement Plan.

I will say that all of these questions are still unanswered, and it does not seem to me that the Trustees of the Retirement System can declare that regular employees of the University of Maine can henceforth become members of the Retirement System of the State of Maine without making provisions for the funds to cover the cost of pension requirements, including prior service credit under the law.

Ralph W. Farris
Attorney General

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