

MAINE STATE LEGISLATURE

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January 13, 1947

To the Attorney General from the Assistant Assigned to M. U. C. C.
Re: Provisional Employees

The Federal Audit exceptions to salary payments made to certain provisional employees of the Department of Health and Welfare and of Maine Unemployment Compensation Commission are predicated upon a regulation dated January 7, 1942 promulgated by the personnel board pursuant to a personnel standard of the Social Security Board applicable to all states.

The Social Security Board's authority for such standard is in section 303 (a) (1) of the Social Security Act with respect to Maine Unemployment Compensation Commission and in section 402 (a) of the same act with respect to the Department of Health and Welfare. Under both Title III and Title IV of the Social Security Act, the Social Security Board may after notice and hearing withhold further payments to states when there has been a "substantial" failure to comply with provisions authorized by the sections cited above.

The standard involved prohibits the continued employment of a provisional employee for a period in excess of six months. On March 13th 1943, the Social Security Board itself permitted the states to continue the employment of provisionals in excess of six months by relaxing its standard during the war emergency.

The regulation dated January 7, 1942 was never acted upon by the governor and consequently never had the force and effect of law. Nevertheless, if the regulation had been repealed, which could have been done by permission of the Social Security Board, there would have been no exception taken. It must follow that there is no valid basis to the exceptions, since there never was a legally adopted regulation.

In the event the Board desired, however, to make an issue of the matter, it seems to me their hands are still tied, because they can only penalize us for a substantial failure to comply. I can see no substantial failure to comply when the practice complained of is actually countenanced by the Social Security Board's own pronouncements even though the state didn't bother to repeal a regulation which never had the force of law.

I am enclosing a letter which I believe covers the situation. If you sign and send it you might let me know, so I can close the case.

John S. S. Fessenden
Assistant Attorney General

NOTE: The Attorney General signed and sent the above mentioned enclosed letter, January 14, 1947.