

MAINE STATE LEGISLATURE

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February 7, 1947

E. L. Walter, Supervisor Pre-Audit Division
Accounts and Control

Your memo of February 5, relating to the matter of Roy L. Sinclair who retired August 30, 1941 as a State employee at the rate of \$1,003.00 per year, effective July 26, 1941, is received. Since that time you state that through November 17, 1946 Mr. Sinclair has been sent his pension check each month, and that sometime prior to July 27, 1942 he accepted a position with the U. S. Employment Service which he has held steadily up until the present.

You further state that the U. S. E. S. became a State department on November 18, 1946 and Mr. Sinclair was taken off the pension payroll on November 17, 1946 and became a contributing member of the State Employees Retirement System.

You further state, in the third paragraph of your memo, that on January 31, 1947 you received a check from Mr. Sinclair in the amount of \$49.35 representing back contributions for the period July 27, 1942 to November 15, 1946, and you cite Chapter 60, R. S. 1944 as amended by Chapter 291, P. L. 1945.

You say that this payment for back contributions brings up several questions on which you would like my opinion. They are set forth as follows:

- (1) May this employee pay for and receive credit for a period of time when he received a Federal salary at the same time he was receiving a State pension.

My answer to this question is in the negative.

- (2) It would seem that it might be incompatible that a retired person may become, retroactively over a concurrent period of pension payments a State employee; does this then, alter his status for that period.

My answer in the negative to Question No. 1, takes care of Question No. 2.

- (3) Would the employee in question be entitled to retain all payments made to him as a pension during the period July 1, 1942 through November 17, 1946.

My answer to this question is in the affirmative.

I call your attention to Paragraph A, Subsection II, Section 3 of Chapter 60, R. S., which provides that: "Any person who was on the payroll as of December 31, 1941 and who was transferred to the Federal Employment service and any person employed by the employ-

ment service after December 31, 1941, and who subsequently may become a State employee when the so-called employment service shall be returned to the State of Maine as an operating unit, shall be considered a member of the retirement system." So you can readily see why Mr. Sinclair would not come within the provisions of the State Employees Retirement System. He retired July 26, 1941 under the provisions of sections 227-233, inclusive, of Chapter 1, P. L. 1933 as they existed immediately prior to July 1, 1942. Therefore he was never a member of the Employees Retirement System which did not take effect until January 24, 1942 as to administrative provisions, and July 1, 1942 as to the rest of the Act. For that reason he was not on the State payroll as of December 31, 1941 and the amendment of 1945, section 2 of Chapter 291, does not apply to a retired State employee who was not on the State payroll as provided by the Act on December 31, 1941.

There is no provision in the State Employees Retirement Act for restoration of service except Section 7, Chapter 60, R. S. which provides for a disability beneficiary to be restored to the service. As I understand the question, Mr. Sinclair retired under the old State pension law. I advise you to return to this retired employee the amount of \$549.35 representing alleged back contributions for Federal service while he was receiving a State pension, and advise Mr. Sinclair that he forfeits his pension under the old law by returning to the State payroll unless he wishes to retire from State employment and accept his pension which can be done at this time as it was under his mistaken interpretation of the law because this office has ruled heretofore that a retired State employee cannot draw a pension and, at the same time, be on the State payroll. If he wishes to remain a member of the Employees Retirement System and on the State payroll, his contribution should begin as of November 17, 1946 as that will be the date when his membership begins if he wishes to forfeit his State pension under the old Law.

Ralph W. Farris
Attorney General