

MAINE STATE LEGISLATURE

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February 13, 1948

To Earle R. Hayes, Secretary, Employees' Retirement System

I have your memo of February 10th stating that the Board of Trustees for the Retirement System have instructed you to ask for a ruling relating to the Retirement status of one Earle B. Porter, a guard at the Maine State Prison, and you quote Subsection IV of Section 6-A of the Retirement Law, which provides for half-pay retirement of certain employees of the Maine State Prison upon completing at least 25 years of creditable service, and note that Subsection VI of Section 6-A, however, places, in the opinion of the Board of Trustees, a very definite limitation on this privilege of retirement, namely, that in order to be eligible for such retirement benefits, the employee must have attained age 55 and must have served at least 25 years "in one of these three services." You further state that Mr. Porter will complete approximately 25 years of service for the State some time in April of this year, but that the records show that approximately 17 years of his service was performed at the State Reformatory for Men, which institution is not named in any of the subsections of Section 6-A above referred to. Hence it is the belief of the Board of Trustees that Mr. Porter's service at the State Reformatory cannot be considered as contributing toward his retirement benefits under the provisions of Subsections IV and VI of Section 6-A; but my opinion is requested in this connection.

I have requested the employee to submit for my information the data on his employment by the State of Maine. He states that on April 28, 1923, he was employed at the State Reformatory for Men at South Windham and continued there as a guard until February 12, 1940, at which time he was transferred to the Maine State Prison. On July 1, 1942, Mr. Porter became a member of the State Employees' Retirement System and began contributing towards his retirement under the Act of 1942. He has continued paying on his retirement fund and at the present time has paid in nearly \$700.

Mr. Porter further states that he has requested retirement on April 28, 1948, at which time he will be nearly 57 years of age and will have 25 years of creditable service in the penal institutions of this State. That is the reason the Board of Trustees requested my opinion on this situation.

Before giving an opinion on the correct interpretation, I will quote Subsection IV of Section 6-A of Chapter 384, P.L. 1947:

"The deputy warden, the captain of the guard, and any guard of the state prison who is a member of this system on July 1, 1947 and who has creditable service of at least 25 years in each of all capacities may be retired at 1/2 of his average final compensation provided such retirement is requested either by the member or the commissioner of institutional service. If any such member should become

eligible under the provisions of this system, as a result of prior service and membership service, to a retirement allowance in excess of 1/2 of his average final compensation, he shall be entitled to the higher retirement allowance."

You will note that the statute provides that any guard of the State Prison, who is a member of this System on July 1, 1947 and who has creditable service of at least 25 years "in each or all capacities may be retired, etc." In this case, Mr. Porter will have had 25 years of creditable service in the capacity of guard in two State penal institutions on April 28, 1948, at which time he will be 57 years of age; and by reason of Mr. Porter's being a guard at the State Prison on July 1, 1947, and by reason of his having creditable service of at least 25 years in the capacity of guard, he is entitled to the benefit of the provisions of Subsection IV of Section 6-A.

I will call your attention to the words "in each or all capacities." It does not say that his capacity should be a guard at the Maine State Prison. The statute simply says that any guard of the State Prison who is a member of this System on July 1, 1947 . . . may be retired, etc."

Furthermore, the legislature never intended to divest any employee of his rights acquired when the Retirement System for State employees was set up in 1942; and Mr. Porter was a guard at the Maine State Prison when he became a member of the Retirement System and has complied with the provisions of the Act. He should benefit from any new provision that the legislature has passed since 1942.

This statute does not apply to the guards of the State Reformatory for Men at South Windham, unless they were doing guard duty at the State Prison and became members of the System on July 1, 1947; but this new subsection would apply to all guards who have creditable service at the State Reformatory for Men, were members of the old System, and were guards at the State Prison on July 1, 1947.

Ralph W. Farris
Attorney General

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