

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

July 23, 1951

To Earle R. Hayes, Secretary, Maine State Retirement System
Re: Chapter 395, P. L. 1951

Your memo of June 18, 1951, to which was attached a copy of a letter to you from the Regional Office of the Federal Security Agency, has been received by this office.

The letter from the Federal Security Agency, written by Laurence J. Bresnahan, Regional Director, requests the opinion of the Attorney General's Department relative to certain sections of the Maine Act before a Federal-State agreement may be entered into, such agreement being authorized by the Act. A discussion of each problem raised by Mr. Bresnahan follows, each problem being separately considered and numbered.

1. Sec. 2 of Ch. 395, Public Laws of Maine, 1951, defines "employment" as follows:

"The term 'employment' means any service performed by an employee in the employ of any political subdivision of the state, for such employer, except service which in the absence of an agreement entered into under the provisions of this chapter would constitute 'employment' as defined in the Social Security Act; or service which under the Social Security Act may not be included in an agreement between the state and the federal security administrator entered into under the provisions of this chapter. Employment in positions covered by any retirement system supported wholly or in part by the state or any of its subdivisions may not be included in such agreement."

Mr. Bresnahan's first question is prompted by the last sentence of the above quoted definition, viz.:

"Employment in positions covered by any retirement system supported wholly or in part by the state or any of its subdivisions may not be included in such agreement,"

it being his belief that a possible interpretation of that sentence could be that services in positions covered by a retirement system which had been established by a political subdivision but was not thereafter supported wholly or in part by such political subdivision would not be excluded from coverage. Relative to this problem, it will be noted that contained within the above quoted definition of "employment" is the statement:

"The term 'employment' means any service . . . except service which under the Social Security Act may not be included in any agreement between the state and the federal security administrator entered into under the provisions of this chapter." . . .

As under the provisions of the Social Security Act, Sections 218 (d) and 218 (b) (4), the Act excludes from coverage under the agreement service in positions covered by retirement systems established by a state or by a political subdivision thereof, and as this exclusion is covered by the definition, it is our opinion that the last sentence of the definition does not alter the general intent of the definition to exclude from coverage those services excluded by the Social Security Act. The sentence is merely a reaffirmation that services in positions covered by retirement systems as defined in the Social Security Act are excluded from coverage.

2. The second problem arising out of Chapter 395, Public Laws of Maine, 1951, enacting Chapter 60-A of the Revised Statutes, concerns the definition of "political subdivision".

The authority for the Federal-State agreement, contained in Section 218 (a) (1) of the Social Security Act, extends only to coverage of employees of the State or any political subdivision thereof. Chapter 395, Section 2, Maine Public Laws, 1951, defines "political subdivision" as follows:

"The term 'political subdivision' includes an instrumentality of the State of Maine, of one or more of its political subdivisions, the University of Maine, academies, water, sewer, and school districts and associations of municipalities or an instrumentality of the State and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision;"

The question presented is whether "the University of Maine, academies, water, sewer, and school districts and associations of municipalities" are "political subdivisions" within the meaning of Section 218 of the Social Security Act.

With regard to this matter, it is our opinion that the employees of the above enumerated instrumentalities are included within the coverage of Chapter 395 only if such instrumentalities are bodies corporate and politic, or instrumentalities of the State, of one or more of its political subdivisions, and are separate juristic entities. In this connection, taking the University of Maine as an example, by Chapter 532, Private and Special Laws of 1865, the Trustees of the State College of Agriculture and the Mechanic Arts (this name being later changed to the University of Maine) were to constitute a body *politic* and *corporate*, having succession as provided by Chapter 532. The University of Maine, is therefore, a body corporate and politic, a juristic entity, and as a result, a political subdivision of the State of Maine. Similarly, water districts, sewer districts, and school districts are bodies corporate and politic, as particularly designated by the acts incorporating such districts.

Relative, then, to this question, it is our opinion that those examples enumerated by Section 2 of Chapter 395, Public Laws of Maine, 1951, as being within the coverage, are, with the possible exception of some of the several "academies", bodies corporate and politic and included within the term "political subdivision", as defined by the Federal Act, Section 218 (b) (2).

It is suggested, for the purposes of administration, that the burden of showing that one is within the classes eligible for coverage should be upon the one in whose possession are the documents evidencing such eligibility, namely, the applicant. That is, if an academy should desire to apply for coverage, that academy should submit evidence that it is a body corporate or politic, or otherwise such an instrumentality as would be eligible under the Federal Act..

3. The third issue raised by Mr. Bresnahan involves an interpretation of Sections 2 and 3-III of Chapter 395 of the Public Laws of Maine, 1951, as compared to Section 218 (f) of the Social Security Act.

Section 218 (f) of the Social Security Act provides:

"Any agreement or modification of an agreement under this section shall be effective with respect to services performed after an effective date specified in such agreement or modification, but in no case prior to January 1, 1951, and in no case (other than in the case of an agreement or modification agreed to prior to January 1, 1953) prior to the first day of the calendar year in which such agreement or modification, as the case may be, is agreed to by the Administrator and the State."

Section 2 of Chapter 395, Maine Public Laws 1951, reads:

"Effective date. The provisions of this act shall be retroactive to January 1, 1951, with respect to any political subdivision that shall elect to accept its provisions as of that date."

Section 3-III of Chapter 395, Maine Public Laws, 1951, reads:

"(The Federal-State) agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein, but in no event may it be effective with respect to any such services performed prior to the 1st day of January, 1951."

The problem presented is the possible implication present in the foregoing provisions of the Maine law that an agreement or modification entered into in 1954 could be made retroactive until 1951.

The Constitution of the State of Maine, Article IV, Part Third, Section 16 (Murchie Constitution), provides that no act or joint resolution of the legislature, with several exceptions not here pertinent, shall take effect until ninety days after the recess of the legislature passing it. The effective date of the State Act herein discussed would, ordinarily, be August 20, 1951. However, the above quoted Section 2 provides that this Act shall be retroactive to January 1, 1951, thereby permitting political subdivisions desirous of securing the coverage offered by the Act to take, for a starting point, January 1, 1951, instead of August 20, 1951.

Application of Section 3-III, Chapter 395, Maine Public Laws, 1951, above quoted, is restricted by Section 3 of that chapter, which states that Sections 3-I, II, III and IV are in effect "except as may be otherwise required by or under the Social Security Act as to the services to be covered. . ."

It is our opinion, therefore, that Section 2 of Chapter 395, Maine Public Laws, 1951, and Section 3-III of Chapter 395, Maine Public Laws, 1951, are restricted by Section 3, Chapter 395, Maine Public Laws, 1951, and Sections 2 and 3 are effective only in so far as they are not prohibited by the Social Security Act.

JAMES GLYNN FROST
Assistant Attorney General

July 24, 1951

To H. M. Orr, Purchasing Agent
Re: Demurrage

Your memo of July 18, 1951, in which you inquire whether the contract now in existence between the State of Maine and Maine Oxy-Acetylene Sup-