

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

for the calendar years  
**1951 - 1954**

people of the town rather than by State officials as such, in that such illegal contracts may be attacked by ten or more tax-paying citizens of the town. . .

JOHN S. S. FESSENDEN  
Deputy Attorney General

November 2, 1951

To Earle R. Hayes, Secretary, Maine State Retirement System  
Re: Social Security – Housing Authorities

We have your memo of October 23, 1951, and the attached letter from the Bureau of Old Age and Survivors Insurance, in answer to your letter of October 4, 1951 in request of answers to questions raised by Harold L. Arno, Executive Director of the Portland Housing Authority. . .

Mr. Arno's first question is: "Is it mandatory that the Housing & Home Finance Agency, Public Housing Administration and the Portland Housing Authority combined, proceed to enter into an agreement with the Maine Retirement System as Lessees and Lessors of the property that we operate as a political subdivision of the State?"

The answer is, Yes. If the purse strings of a political subdivision of the State are controlled by another agency, then of necessity the contract should be signed by both those bodies.

Question 2. "Will it be within the jurisdiction of the Maine Retirement System to enter into an agreement with the Portland Housing Authority wherein such agreement would contain an 'escape' clause permitting the housing authority to cease making contributions plus the pro rata cost of administration, if and when the Authority shall no longer exist with powers to function as a political subdivision in accordance with Federal and State laws?"

The answer to this question is, No. It appears that under Section 1 of Chapter 395 the State extends the benefits of Social Security to "employees of the political subdivisions of the State of Maine." If a political subdivision ceases to exist, then in that event contributions need not be paid by one who no longer has employees coming within the definition of the Act. Such an "escape clause" would not be needed. If in fact it was desired to cover such a situation and if desired for other purposes, it would not be permissible.

Question 3. "Will it be within the jurisdiction of the Maine Retirement System to enter into an agreement with the Authority wherein it would be specified that the Authority would be granted the right to prove our financial responsibilities annually to cover the necessary amounts for contributions and administrative costs in accordance with the established rates from year to year? The request for an answer to this question is made due to the fact that funds cannot be budgeted by any Federal Municipal Quasi-Organization for a period longer than one fiscal year."

This question poses administrative problems. Section 4, sub-section I, provides that the political subdivision submit a plan to the State agency for approval, and paragraph B contemplates that the political subdivision specify the source or sources from which the funds necessary to make the required

payments are expected to be derived and give reasonable assurance that such sources will be adequate, for such purpose. Whether or not proof of financial responsibility annually is a practicable method of assuring the State agency that such sources will be adequate is an administrative problem. It seems reasonable that the State agency cannot permit a political subdivision, because of an annual financial responsibility proof, to be a member one year, fall out the next year, and be re-admitted the third year, all because of the results of said proof. Perhaps for that reason the answer to Question 3 should be, No. However, paragraph B must be complied with in some manner acceptable to the State agency and with respect to that answer we feel that it is an administrative problem.

Question 4. "If an agreement were to be entered into by the Maine Retirement System and the Portland Housing Authority, which has been operating in Portland, Maine, as a political subdivision of the State, under the provisions of Chapter 260, Public Laws of Maine, approved April 5, 1943 as an emergency act, and the present Authority's powers should cease to exist in accordance with that law, and a new Housing Authority was created by the City of Portland, Maine, in accordance with Maine Public Law H. P. 2089-LD 1561 Chapter 81A—approved 5-7-49, would the agreement entered into now be cancelled and a new agreement be entered into with the new Authority?"

With respect to this question the answer cannot be, Yes, or, No. When the present Authority's powers cease to exist in accordance with Federal and State laws, the then existing contract between the Authority and the State agency would be cancelled. Whether or not a new agreement would be entered into with the new Authority is a question that could be answered only at that time, depending upon whether the new Authority would be then acceptable to the State agency. In great part the answers to Question 4 and Question 2 are the same, Question 4 adding only the question of whether a new agreement would be entered into with the new Authority.

JAMES G. FROST

Assistant Attorney General

November 2, 1951

To Earle R. Hayes, Secretary, Maine State Retirement System

Re: Wardens

Subsections III and IV of Section 6-A of Chapter 384, Public Laws of 1947, provide special retirement benefits of wardens of the Department of Inland Fisheries and Game and to the deputy warden, the captain of the guard, and any guard of the State Prison.

These sections provide that if such person is a member of this (Retirement) system on July 1, 1947 and has creditable service of at least 25 years in that capacity, or in the case of the prison work, in each or all capacities, he may retire at  $\frac{1}{2}$  of his average final compensation, provided such retirement is requested by either the member or the Commissioner.

Subsection VI of said section states that in order to obtain the benefits of subsections III, IV and V of this section, the member must have attained the age of 55, must have served 25 years in one of the above capacities, and