

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

and subject to the approval of the Department of Health and Welfare.

JAMES G. FROST
Assistant Attorney General

December 21, 1951

To Earle R. Hayes, Secretary, Maine State Retirement System
Re: Employment of Persons who have attained age 70.

We have your memo of November 1, 1951, in which you make inquiry as to the present policy of the State relative to the employment of persons 70 years of age or older. You state that from time to time it has been the policy of this State to permit the employment of such persons if it was found necessary or desirable because of existing emergencies.

Section 6-A of Chapter 384, P. L. 1947, provides that any member of the Retirement Service who attains the age of 70 shall be retired forthwith, with the possibility that employment may be extended for the further term of one year at the request of the Governor with the approval of the Council.

Compulsory retirement at age 70 with a possible one-year extension at the request of the Governor with the approval of the Council would seem to negative the employing of persons aged 70 years or more. Therefore presently the policy is not to employ persons 70 years of age or older, according to the opinion of John S. S. Fessenden, Deputy Attorney General to Governor Payne, dated November 9, 1951, relative to the appointment of a person over 70 years of age to public office, the pertinent portion of which we here quote:—

“Also we should point out that the provisions of the State Retirement System provide direct limitations for employment at 70 years of age, employment thereafter to be only upon the express authority of the Governor and Council, extending the employment under certain circumstances. . .

“The foregoing is sufficient to point out what appears to be a distinct trend in legislative policy to refrain from retaining in the public service persons who have arrived at the age of 70 years.”

It is therefore our opinion that presently there exists no such emergency as would permit of the general policy of employing persons 70 years of age or over.

JAMES G. FROST
Assistant Attorney General

December 27, 1951

To Earle R. Hayes, Secretary, Maine State Retirement System
Re: Probation Clerk, Cumberland County

In answer to your memo of October 16, 1951, in which you ask if the probation clerk of Cumberland County, appointed by the Judge of the Portland Municipal Court, is actually an appointed official, so that membership in the Retirement System for such clerk is optional, we should like to express