

# 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

our opinion that such probation clerk is an appointed official and comes within that provision of the law, Section 3, subsection I, of Chapter 384 of the Public Laws of 1947, which states that membership is optional in the case of any class of elected officials or any class of officials appointed for fixed terms.

JAMES G. FROST  
Assistant Attorney General

December 28, 1951

To Earle R. Hayes, Secretary, Maine State Retirement System  
Re: Participating Districts (City of Rockland).

In your memo of December 14, 1951, you state that the City of Rockland became a participating local district under the State Employees' Retirement System by virtue of a Resolve passed by the City Council of that city on January 13, 1947, which Resolve approved "the participation of all employees of said City of Rockland (except school teachers) in the State Employees' Retirement System. . ."

Under date of November 14, 1951, the City Council of the City of Rockland amended the original Resolve by inserting the word "classified" before the word "employees".

It is stated that the intention of this amendment was to permit certain employees of the city, who under their civil service law are set up as unclassified employees, to avail themselves of Social Security coverage as opposed to the State Retirement System.

You present the question whether a local participating district has any right under the law to amend its original action with respect to taking the benefits of the Maine State Retirement System. In other words, Can a city, once having elected to permit all its employees to participate in the Maine State Retirement System, subsequently amend its laws to exclude certain employees from participating who had hitherto been eligible by virtue of the City's original action in authorizing their participation?

It is our opinion that once having elected to participate in the State Retirement System, a City may not by subsequent amendment of its laws eliminate from participating in the System employees who had hitherto been covered.

More and more it is being realized that retirement systems are set up because of the need of the State to care for its aged citizens. For this reason the laws are liberally construed in favor of coverage and are otherwise strictly interpreted. To this effect see 60 Arizona 232, where a city, once having elected to participate in a State plan, could not subsequently revert to a city plan. Analogously, therefore, our opinion is that a city, once having elected to participate completely under the Maine State Retirement System, cannot subsequently by City Council action subdivide those employees to participate in other pension plans. This is not to be construed as preventing a city, where complete coverage is not in effect, from time to time enlarging its coverage to include employees not covered by existing pension plans.

JAMES G. FROST  
Assistant Attorney General