

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

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