STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1951 - 1954

September 23, 1952

To Melvin E. Anderson, County Attorney, Aroostook
Re: Labor of Prisoners

. . You ask the opinion of this office as to whether or not county commissioners can place prisoners in the county jail to employment without the consent of the sheriff, under the provisions of either section 20 or section 25 of Chapter 79 of the Revised Statutes.

It will be noted that in both said sections it is stated that the county commissioners "may authorize" the employment of prisoners. A complete reading of the statutes relative to county commissioners and sheriffs would show that the county commissioners, political officers of the State, are primarily the finance officers of the county and that the sheriff has absolute and exclusive custody and charge of all prisoners confined in the jail. The sheriff is the one primarily liable for the safekeeping of the prisoners and it is our opinion that the county commissioners may not order such prisoners to work outside the jail without first receiving the permission of the sheriff.

To this effect we draw your attention to *Sawyer v. County Commissioners*, 116 Maine, 408 at page 412, where the provisions under consideration here have been directly considered. With respect to the words, "may authorize," it is there said:

> "This last provision is significant. The commissioners are not permitted to set the prisoners at work, themselves. They can only authorize the keeper of the jail to do this."

JAMES G. FROST
Deputy Attorney General

September 24, 1952

To Earle R. Hayes, Secretary, Maine State Retirement System
Re: Options

This will acknowledge receipt of your memo of September 23, 1952.

You state that on the application required by your System, Alga L. Towle designated her stepfather as her beneficiary. You further indicate that Miss Towle attained eligibility for retirement, but died before she elected one of the options provided under section 10 of Chapter 60, R. S., as amended. You then inquire if a stepfather can be considered to conform to the provision of the law above referred to, which names "father" as a beneficiary in such cases.

We do not believe that the problem as to whether or not a stepfather can be considered to be included in the term "father" is involved in this case.

We interpret the effect of section 10 of Chapter 60 to mean:

1) upon the death of a person who has attained eligibility for retirement but has not elected one of the optional forms permitted by section 10, then in such event it is as if Option No. 2 had been elected. Option No. 2 provides for payment after death of the employee "for the life of the beneficiary nominated by him by written designation. . ."

2) In the absence of the designation of the beneficiary, then the law steps in and states to whom payment shall be made: ". . . provided further, that in the absence of the designation of a beneficiary, these benefits shall accrue to his next of kin, who for the purpose of this section shall be defined to be: wife, husband, father, mother."

According to your memo Miss Towle filed an application with you on which she indicated her choice of beneficiary – her stepfather. Under the provisions of Option No. 2, read in conjunction with the first paragraph of section 10, her stepfather, having been duly designated as beneficiary, should receive the payments contemplated under Option No. 2, and the question as to whether a stepfather can be considered to be included in the term "father" is not here present. In other words, under the Act, an employee may name any person as beneficiary, and under the circumstances described above, that beneficiary is entitled to the benefits set out in Option No. 2, notwithstanding relation or kinship or absence of relation or kinship to the employee. See section 1, "Definitions" (Beneficiary). It is only where the employee has failed to designate a beneficiary that the law states that benefits should accrue to the next of kin.

JAMES G. FROST
Deputy Attorney General

September 25, 1952

To Frederick P. O'Connell, Director Dept. Veterans' Affairs
Re: Loss of Re-employment Rights

This office has been requested to give its interpretation of section 23, Chapter 59, R. S. 1944, and section 3, Chapter 60, R. S. 1944, as applied to the following problem.

An individual having been regularly employed for a period exceeding six months, is duly called into the service of the United States. After a period of time in the service the individual writes to his former department head requesting that the sum of money contributed by him into the Retirement System be withdrawn and forwarded to him. In answer to the request the department head informs him:

"It is too bad that you have to take this action as it automatically means cancellation of your leave of absence and your complete severance from State Service. In other words, the only way you can collect this money is through resignation. Upon receipt of the form we will file a Separation Notice."

Upon receipt of this letter the individual submitted his resignation and an amount of money representing his contribution to the Retirement System, plus interest, was returned to him.

Upon being discharged from the Armed Forces, that individual now desires to be re-employed by the State and contends that, being an honorably discharged veteran, he is entitled to re-employment rights.

The question is then: Is an employee, under the factual circumstances as outlined above, entitled to re-employment rights under our laws?