STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1951 - 1954

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writes to his former department head requesting that the sum of money contributed by him into the Retirement System be withdrawn and forwarded to him.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?

It is the opinion of this office that the individual has waived any rights he would have otherwise been entitled to, by his action in submitting his resignation.

Being a member of the Retirement System is a condition of employment except in certain instances which are not pertinent to this case. (Section 3, Chapter 60, Revised Statutes.)

A member of the Retirement System remains a member, even though he enters the Armed Forces of the United States, if he does not withdraw his contributions. Section 3, subsection VI, Chapter 60, R. S., reads in part as follows:

> ". . . provided, however, that the membership of any employee entering such classes of military or naval service of the United States as may be approved by resolution of the board of trustees, shall be considered to be continued during such military or naval service *if he does not withdraw his Contributions*. . .

Having resigned from employment in order to obtain a refund of his contributions, the individual is no longer a member of the System, no longer an employee, and as a result no longer eligible to re-employment rights.

In the instant case the resignation and subsequent withdrawal of contributions, in the amount of approximately $375.00, was done in the face of advice as to the result of such action – that it would result in a complete severance from State Service.

It must therefore be concluded that the individual involved, having been an employee of the State of Maine, was assumed to know the laws concerning his employment, and that his voluntary action, amounting to an election and despite the warning given him by his department head, was a waiver of his re-employment rights, and as a result the State cannot be compelled to restore him to employment.

The records disclose no request for re-employment within the 90-day period following discharge, but we assume such request was made and this opinion has been written accordingly.

ALEXANDER A. LaFLEUR
Attorney General

October 6, 1952

To Paul A. MacDonald, Deputy Secretary of State
Re: Accident, Note, and Bankruptcy

. . . On January 27, 1947, Mr. X. was involved in an automobile accident and came within the provisions of the financial responsibility law of this State. As a result of this accident he and his wife signed a promissory note on February 15, 1947, payable to the injured party. Suit was brought on the note within a year and judgment obtained but not satisfied.

On the 10th day of May, 1952, Mr. X. received a discharge in bankruptcy. You state that it is contended by his attorney that in enacting this statute the legislature intended that suit should be in tort and not in contract in order for this law to apply. It is maintained that the delivery to the injured