

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

You say that in your judgment the only way to train these auxiliary firemen properly is to give them some such actual practice.

It would appear that such members of Civil Defense as are so used would be protected by either one of the following procedures:—either that, as suggested, the project be designated a training period or that contact be made with the Forestry Department and the members engaged by them, in which case they would be protected as State employees engaged by the department for fire protection.

It is the opinion of this office that your members would be protected in either manner.

NEAL A. DONAHUE
Assistant Attorney General

August 13, 1953

To H. H. Harris, Controller

Re: Automobile Mileage of State Fire Inspectors

This office has in hand a memo dated August 6, 1953, in the following terms:

“Chapter 168, Public Laws of 1953, relates to Automobile Travel by State Fire Inspectors and, in effect, changes the rate of reimbursement for this class of employees from a straight 8 cents per mile to not more than 7 cents per mile for the first 5000 miles actually travelled in any one fiscal year and 6 cents per mile thereafter. The chapter is effective August 8, 1953.

“Question: Is the mileage travelled between July 1, 1953 and August 8, 1953 to be considered as part of the first 5000 miles travelled during the fiscal year or do these employees start their first 5000 on August 8?”

Answer. Under the provisions of Chapter 168 of the Public Laws of 1953, fire inspectors start their first 5000 miles on August 8th. Until August 8th fire inspectors had unlimited mileage at the rate of 8 cents a mile and they only come under a limited mileage basis on August 8th. It would logically follow that they then should start on a 5000-mile basis.

JAMES G. FROST
Deputy Attorney General

August 13, 1953

To Earle R. Hayes, Secretary, Maine Retirement System

Re: Ten-Year Vested Right Amendment

Section 2 of Chapter 412 of the Public Laws of 1953 amends subsection VIII of Section 3 of Chapter 60 of the Revised Statutes so that, as amended, subsection VIII reads as follows:

“VIII. Any employee who is a member of this retirement system may leave state service after 10 years of creditable service and be entitled to a retirement allowance at attained age 60 provided the contributions made

by such member have not been withdrawn, and provided further, that his retirement allowance shall be based upon the total number of years of creditable service, in accordance with the provisions of this chapter. Any benefit provided by this subsection shall be contingent upon the established fact, as evidenced from the records of the retirement system, that any and all contributions ever made to the system by the member involved shall never have been withdrawn during any period of time dating from separation from service to the date on which such individual attains age 60 and/or applies for his retirement benefit.'

With respect to this amendment you ask the following questions:

1) Do the provisions of the new amendment apply to any person who has been a member of the Retirement System and who has never withdrawn his contributions, regardless of when such person separated from active State or teaching service?

2) In the case of a former employee of the State, teacher, or local participating district employee who has already separated from service and has never withdrawn his contributions and who returns to active service subsequent to August 8th, would the provisions of this new amendment apply?

In answer to Question 1, it will be noted that the statute reads, "any employee who is a member of this retirement system," which would appear to indicate that it was the intent of the legislature that after the effective date of the Act any person who is then in the employ of the State and who has then ten years of creditable service may leave State service and be eligible for the benefits provided by this section. It has been held that the establishment by statute of a pension is not to be construed retrospectively so as to confer benefits. Statutes are to be given prospective and not retrospective effect, unless the latter effect is made compulsory by the language of the Act itself. The answer, therefore, to Question No. 1 must depend upon the date of separation from service.

The answer to Question No. 2 is, Yes.

"A statute is not rendered retroactive merely because the facts or requisites upon which its subsequent action depends, or some of them, are drawn from a time antecedent to the enactment."

JAMES G. FROST
Deputy Attorney General

August 18, 1953

To Hon. Burton M. Cross, Governor of Maine

Re: Section 10, Article IV, Part Third, of the Maine Constitution

This office has been asked if a member of the Ninety-sixth Legislature can be appointed by the Governor to fill the vacancy created in the judgeship of the Cumberland County Probate Court by the death of Judge Chaplin, the salary of said Judgeship having been increased by act of the Ninety-sixth Legislature.

This question is asked because of the existence of the above-captioned section of the Maine Constitution, which reads: