

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

for the calendar years  
**1951 - 1954**

by such member have not been withdrawn, and provided further, that his retirement allowance shall be based upon the total number of years of creditable service, in accordance with the provisions of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retirement system, that any and all contributions ever made to the system by the member involved shall never have been withdrawn during any period of time dating from separation from service to the date on which such individual attains age 60 and/or applies for his retirement benefit.'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provisions of the new amendment apply to any person who has been a member of the Retirement System and who has never withdrawn his contributions, regardless of when such person separated from active State or teaching service?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of the State, teacher, or local participating district employee who has already separated from service and has never withdrawn his contributions and who returns to active service subsequent to August 8th, would the provisions of this new amendment apply?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:

"No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this state, which shall have been created, or the emoluments of which increased during such term, except such offices as may be filled by elections by the people."

It is the opinion of this office that Section 10 does not prohibit a member of the legislature from being appointed to fill the vacancy above mentioned, even though the emoluments of said office were increased during the term of such legislator. It seems that the clear intent of Section 10 is to prohibit appointment to any civil office of profit except such office as may be filled by election by the people.

"If the section as originally adopted had any other meaning than that the exception removed elective offices from the operation of the prohibitory clause, the inclusion of the exception was meaningless and surplusage, for the section would then mean that legislators were eligible for appointment except when they obtained their offices by election."

*Carter v. Commission on  
Qualifications of J. A.,  
93 Pac. 2d 140.*

The above quotation is from a case decided by the California Supreme Court, which considered the identical problem with which we are faced and in a well-considered opinion decided that the legislator was eligible for appointment to an elective office to fill a vacancy created by the death of a judge.

It should be noted that the Supreme Court of the State of Maine in an Opinion of the Justices, 95 Maine at 588, 589, in discussing the constitutional provision in question, though not considering our immediate problem, makes the bold and strong statement which follows:

"It may be noted, however, that this prohibition does not include 'such offices as may be filled by elections by the people.'"

Because of the clear wording of the constitutional provision and the cases discussing this point, this office has no hesitation in submitting the above opinion.

JAMES G. FROST  
Deputy Attorney General

August 20, 1953

To E. L. Newdick, Secretary to the Seed Potato Board  
Re: Balance of Funds

We acknowledge receipt of your letter relative to Chapter 27, Revised Statutes, Sections 127 A-F, in which you ask,

"Assuming that on June 30, 1956, the Board has \$50,000 on hand to pay the balance which it now owes the State, what is the future status of the Board? Can it function as it has in the past, or is new legislation needed to continue?"

Payment of any final balance of the \$100,000 originally granted by the legislature would not affect the continuing existence of the Board and its functions.

JAMES G. FROST  
Deputy Attorney General