

MAINE STATE LEGISLATURE

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September 23, 1953

To Willard R. Harris, Acting Director of Personnel
Re: Seniority Rights - Appeal of Lloyd R. Sinclair

Your memorandum, dated September 8, 1953, with attached data, is acknowledged. You request an opinion of this office if the Personnel Board may consider service by subject Sinclair with the Emergency Farm Labor Program during the period 7/2/45 to 12/31/46 as within the purview for the benefits of Section 3, subsection II, paragraph A, of Chapter 60, R. S. 1944, and the purview of Rule 12.3, Section C, of the Personnel Rules regarding seniority with respect to lay-offs.

The sections of law, other than those extending benefits to the military, which recognize credit for employment in the Federal Service, are found in Section 3, subsection II, Chapter 60, R.S. 1944, cited above. Said Section 3 affects only those individuals who, under certain conditions, have been employed by the Federal Government and who are subsequently employed by the State of Maine.

Subject Sinckair alleges that he was employed by the Emergency Farm Labor Program during the period 7/2/45 to 12/31/46, claiming that this program performed functions alleged to have been carried on by the State of Maine, later by the Federal Government, and subsequently by the State of Maine.

Subject Sinclair admits that he never was employed by the Federal Employment Service, but apparently rests his claim to consideration upon the theory that the type of work he performed under the Emergency Extension Farm Labor Program paralleled and was similar to that type transferred to the USES and later carried on by the State of Maine and that such service entitles him to receive the same benefits as are enjoyed by employees under the provision of Section 3, heretofore mentioned.

The problem presented is one of fact, to be determined initially by the Board, as this office is not in a position to determine the accuracy of the facts alleged by Mr. Sinclair, his dates of employment, by whom employed, status of employment, - in other words, it seems to this office that it is for the Board, administratively, to determine questions of seniority and the extent of such seniority.

Section 3, subsection II, Chapter 60, R. S. 1944, specifically sets forth three instances where certain Federal employees are entitled to benefits when they later become State employees.

Neither this office nor your Board can amend, alter or repeal a statute. Either the subject employee complies with the requirements of the statute or he does not. This is an administrative determination and not a legal question. It therefore would follow that the Board must find the facts and should resolve any questions relative to the statute in question.

Alexander A. LaFleur
Attorney General