

MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT
OF THE
ATTORNEY GENERAL

for the calendar years
1955 - 1956

date of the vesting order, an alien enemy of the United States. The vesting order is conclusive as to the title or right to possession in the vested property in the Attorney General for the United States. Questions of title to the property which is vested in him by virtue of the Trading with the Enemy Act, can be tried only in a suit brought under the provisions of that Act. See Section 9 (a) of the Act. The State is protected by Sections 7 (e) and 5 (b) (2) of the Trading with the Enemy Act, which provide that any payment or transfer made by virtue of any vesting order under the Act shall be a full acquittance and discharge for all purposes of the obligation and of the person making the same and no person shall be held liable in any court for or in respect of anything done or committed in good faith in connection with the administration of this Act.

In the *Cities Service* case above mentioned, the trustee was the Chase National Bank, who argued that there was a possibility that the debentures could be presented at one of their branch banks outside the United States and that there was a possibility that a foreign court could order them to pay in the foreign jurisdiction; therefore they would be subject to double liability, and this might well be a taking of their property in violation of the Fifth Amendment. The Court held that if this event happened, the bank would have a right to recoup from the United States for a taking of their property within the meaning of the Fifth Amendment, to the extent of their double liability.

In view of the *Cities Service* case and the protection given to the State by the provisions of the Trading with the Enemy Act, as construed, it is our opinion that there is now sufficient protection to the State of Maine on double liability to warrant the transfer of the face value of the bonds plus the accumulated interest on each to the Attorney General of the United States for account No. 28-18501.

ROGER A. PUTNAM
Assistant Attorney General

March 15, 1956

To Earle R. Hayes, Secretary, Maine State Retirement System

Re: Disability Retirement—Occupational Disability

We are returning herewith all materials submitted by you for our consideration *re* an application for retirement under the provisions of Section 7, subsection II, Occupational Disability.

You requested an opinion as to the definition of the word "injuries," as used in subsection II, paragraph A. The essence of the occupational disability law is that an employee may be retired if he has incurred disability as the result of injuries received in the line of duty.

"A. Upon the application of a member or of his department head, any member who has had 10 or more years of creditable service, or any member in service regardless of years of creditable service upon the determination by the Board that he has incurred disability as the result of injuries received in the line of duty, may be retired by the Board of Trustees on a disability retirement allowance upon filing such application; provided that the medical board, after a medical examination of such member, shall certify that the member is mentally or physically

incapacitated for further performance of duty, that such incapacity is likely to be permanent and that he should be retired. The Board of Trustees shall determine upon receipt of proper proof that the injury received in line of duty occurred while in actual performance of duty at some definite time and place and was not caused by the wilful negligence of the member.”

Generally, a statute giving benefits to individuals for injuries sustained during the course of employment, such as workmen’s compensation laws, have as a condition that such injury must have been sustained as a result of an accident.

Under such laws idiopathic diseases such as occupational diseases are quite uniformly held not to be regarded as accidents.

In those instances where occupational poisoning have been determined to be compensable, it is because the legislature has so declared it and not because of extension by way of interpretation or construction. See the occupational diseases portion of our Workmen’s Compensation Act, Chapter 31, Sections 57-71.

Where, however, the Act does not contain the condition that the injury must have been inflicted as a result of an accident, the courts have been inclined to include occupational diseases as compensable. See *Johnson’s Case*, 217 Mass. 338, where the court held that plumbism, or lead poisoning, absorbed over a period of twenty years, resulting in incapacitation, was such an injury as arose out of and in the course of employment. Likewise with loss of sight induced by coal tar gases, and glanders.

In the present Act the legislature did not use the word, “accident.” Confined, then, to the word, “injuries,” we feel that the word is not limited to injuries caused by external violence, physical forces (traumatic injuries) or as a result of accident in the sense the word is customarily used, but includes any bodily injury.

Thus, if the Board finds that a person otherwise eligible has incurred disability as a result of occupational poisoning received in the line of duty and occurring while in the actual performance of duty at some definite time and place, and such poisoning was not caused by the wilful negligence of the member, then we are of the opinion that under such circumstances the injury is such that it comes within the intent of the Retirement Act.

JAMES GLYNN FROST
Deputy Attorney General

March 15, 1956

To Labor and Industry

Re: Telephone Answering Services

. . . You ask if females employed by a telephone answering service are within the provisions of Section 30 of Chapter 30, Revised Statutes of 1954, as amended by Section 1 of Chapter 348, Public Laws of 1955, *et seq.*

Section 30 as amended relates to the employment of females in “workshops, factories, manufacturing, mechanical or mercantile establishments, beauty parlors, hotels, commercial places of amusement, restaurants, dairies, bakeries, laundries, dry-cleaning establishments, telegraph offices and telephone exchanges.”