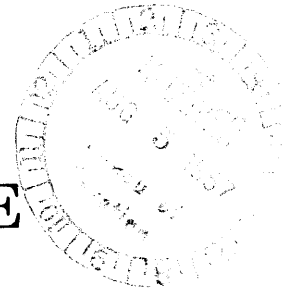
STATE OF MAINE



REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1955 - 1956

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."

The following is a description of the telephone answering service as contained in your memo:

"The New England Telephone & Telegraph Co. rents to the answering services what they call 'secretarial turrets,' which have a 40-line capacity. The larger companies might have more than one such turret, but probably not more than two. The answering services then contract with doctors or other professional men or businesses to answer their telephones when they are out. The 'customer' then arranges with the N. E. T. & T. to buy a line to the turret, paying to the answering service a monthly charge for the 24-hour service.

"The only connection with N. E. T. & T. is the renting of the turret to the answering service and the buying of the lines to the turrets by the customers. The services are individually owned and operated."

We are of the opinion that such employment does not come within any of the above activities contained in Section 30.

JAMES GLYNN FROST
Deputy Attorney General

March 19, 1956

To Sulo Tani, Director of Research and Planning, Development of Industry and Commerce

Re: Federal Assistance under the Federal Housing Act

This is in response to your request for an official opinion as to whether or not the Department of Development of Industry and Commerce, Division of Research and Planning, meets the qualifications to act as applicant for federal assistance to local planning under the Federal Housing Act of 1954, Title VII, Section 701. Said section appropriates a sum of money to be spent on a matching basis with non-federal funds for the purpose of clearing slums and blighted areas and to stimulate State assistance for local planning in those areas.

The procedures for eligibility are set out in "A Guide to Urban Planning Assistance Grants." On page 1-3 of the aforesaid booklet the qualifications of applicants are set forth:

"In order to qualify for grants, States acting by and through their legally created State planning agencies must be:

"a. Empowered, under their State laws, to provide planning assistance to small municipalities in the solution of their local planning problems.

"b. Legally empowered to receive and expend Federal funds and expend other funds for the purpose stated in a. above, and to contract with the United States with respect thereto.

"c. In position to provide State or other non-Federal funds in an amount at least equal to one-half the estimated cost of the planning work for which the Federal grant is requested.

"d. Technically qualified to perform the planning work, either with their own staffs or through acceptable contractual arrangements with other