

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

His search indicated that Grove Street was an old county way, and there was no evidence that it had ever been accepted by the City of Augusta or that the City had purchased any land there.

It not having been accepted, it would seem that its discontinuance was hardly necessary, and the circumstances would indicate that the City had no vested rights there which could be used as a consideration in exchange for the other area.

Under those circumstances it may appear that the State would be under no obligation to allow the new area to become a city street unless that should appear to be desirable.

NEAL A. DONAHUE
Assistant Attorney General

April 18, 1957

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

Re: "Civilian Employees" of the Adjutant General

We have your memo in which you inquire if certain "Federal" employees in the Department of the Adjutant General are eligible to participate in the Maine State Retirement System.

The "Federal" employees concerning whom you make inquiry are the civilian employees of the Maine National Guard who are employed pursuant to Section 90 of the National Defense Act of June 3, 1916 (32 U.S.C., sec. 42).

The Maine State Retirement System was inaugurated primarily for the benefit of State employees, Chapter 63-A, R. S., 1954, as amended. Section 2 of the Act provides:

"A Retirement System, as herein established, shall be placed under the Board of Trustees for the purpose of providing retirement allowances and other benefits under the provisions of this chapter for employees of this State. The Retirement System, so created, shall be considered to have been established July 1, 1947 for employees employed for the first time thereafter and for all employees who were eligible for the provisions of Sections 212 to 241, inclusive, of chapter 37 of the revised statutes of 1944; July 1, 1942 for all employees who were eligible for the provisions of chapter 60 of the revised statutes of 1944; and for all other employees the date on which contributions were first made by them to any retirement system supported in whole or in part by the State. It shall have the powers and privileges of a corporation and shall be known as the 'Maine State Retirement System,' and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held in trust for the purpose for which received."

The word "employee" is defined in Section 1 of Chapter 63-A:

" 'Employee' shall mean any regular classified or unclassified officer or employee in a department, including teachers in the state teachers' colleges, normal schools and Madawaska training school, and for the purposes of this chapter, teachers in the public schools, but shall not in-

clude any member of the State Legislature or the Council or any Judge of the Superior Court or Supreme Judicial Court who is now or may be later entitled to retirement benefits under the provisions of section 5 of chapter 103 and section 3 of chapter 106, nor shall it include any member of the State Police who is now entitled to retirement benefits under the provisions of sections 22 and 23 of chapter 15. Persons serving during any probationary period required under the Maine State Personnel Law and rules of the State Personnel Board shall be deemed regular employees for the purposes of this definition. In all cases of doubt, the Board of Trustees shall determine whether any person is an employee as defined in this chapter.”

By express statutory enactment, coverage under the Act was extended to employees of any county, city, town, water district, public library corporation or any other quasi-municipal corporation of the State, or of the Maine Municipal Association; Section 17, Chapter 63-A.

In order to determine that civilian employees of the National Guard who are employed pursuant to Section 90 of the National Defence Act of June 3, 1916 (hereinafter referred to as “civilian employees”) are eligible to participate in the Maine State Retirement System, it is necessary to identify that group as being “employees” within the terms of the Maine State Retirement System Act.

Clearly, “civilian employees” are not employees of the bodies set forth in Section 17, *supra*.

Nor are they embraced within the term “Employee,” as defined in Section 1, Chapter 63-A, unless they are included in either of the categories of “regular classified or unclassified officer or employee”

To determine whether “civilian employees” are either regular classified or unclassified employee(s)”, we must turn to the Personnel Law, Chapter 63, R. S. 1954.

Section 11 of Chapter 63 sets forth specifically the officers and employees who comprise the unclassified service, and, while officers and enlisted men in the National Guard and Naval Militia are included as unclassified employees, civilian employees are not so included.

Turning to classified employees, we find that group quite clearly defined in Section 6 of Chapter 63-A:

“The classified service shall consist of all persons holding offices and employments now existing or hereafter created in the state service, except persons who are holding or shall hold offices and employments exempted by the provisions of section 11.

“Appointments to and promotions in the classified service shall be made according to merit and fitness, from eligible lists prepared upon the basis of examinations, which so far as practicable shall be competitive. No person shall be appointed, transferred, or reduced as an officer, clerk or employee or laborer in the classified service in any manner or by any means other than those prescribed in this chapter and in the rules of the board made in pursuance to this chapter.

“The classified service shall be separated into the following divisions:

- I. Competitive,
- II. Noncompetitive,
- III. Labor,

in accordance with rules and regulations prescribed by the board."

Examining the statutes further, we find that classified employees are employed as the result of standing on an eligible register, achieved usually by competitive examination given by the Personnel Board (Section 12). Their duties and responsibilities are ascertained by the Director of Personnel (Section 13); compensation is paid according to a compensation plan adopted by the Personnel Board; original appointment, promotion, transfer, reinstatement or demotion is accomplished in pursuance of rules and regulations established by the Board (Section 15); the dismissal and disciplinary action taken in relation to classified employees are also subject to statutory control.

In comparing the State classified employees to "civilian employees," we find that the Adjutants General of the several States, Territories, Puerto Rico, and the District of Columbia have the authority to employ, fix rates of pay, establish duties and work hours, supervise, and discharge "civilian employees," all within the purview of National Guard Regulations. See National Guard Regulations No. 75-16, Department of the Army, Washington 25, D. C., 7 January 1953.

These "civilian employees" are on the Federal payroll and are paid completely from Federal funds.

The above examination of our statutes compels us to the opinion that such "civilian employees" are not eligible to participate in the Maine State Retirement System. The statutes regarding State employees are in no manner complied with in the employment, the continuing employment, the dismissal or other control of these "civilian employees."

In answer to your further question as to whether the "civilian employees," or any of them, were eligible to participate in the Maine State Retirement System as of September 1, 1954, we are of the opinion that they were not so eligible. The laws with respect to participation in the Maine State Retirement System were, in so far as this group is concerned, the same in 1954 as they are today, with complete control of the employees vested in the Adjutant General.

Having determined that "civilian employees" are not eligible to participate in the Maine State Retirement System, we would advise, in terminating the association of such employees with the Retirement System, that each such "civilian employee" who has made contributions to the Retirement System should be refunded the entire amount of such contributions, plus such interest thereon, not less than 3% accumulated interest, as the Board of Trustees shall allow, in conformity with Section 12, Chapter 63-A, R. S. 1954, as amended.

FRANK F. HARDING
Attorney General

April 30, 1957

To David H. Stevens, Chairman, State Highway Commission

Re: Controlled Access Roads

You have requested my opinion as to the meaning of Section 11 of Chapter 23 of the Revised Statutes.