

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1957 - 1958**

the group life insurance should accrue to the general assets of the bank to offset these expenses.

As a practical matter, the attempt to devise an equitable formula for the pro rata distribution of such a dividend to certificate holders presents a formidable problem. It would be difficult, if not impossible, to determine whether a part of the dividend should go to a mortgagor whose loan was paid prior to declaration of the dividend, to the estate of a mortgagor whose death resulted in a claim by the policyholder, and to a mortgagor who terminated his insurance prior to the declaration of the dividend. Superimposed on this is the problem of determining whether a factor should be used to account for the average amount of the loan outstanding from each mortgagor over the dividend period. Once devised, the distribution formula might well result in the issuance of a multitude of checks or credits for insignificant amounts of money.

Add to this that after the first policy year the group premium rate is subject to adjustment based on the claim experience which usually results in a smaller dividend, or none, the following year, and the substance of the problem disintegrates.

While legislation to remove any doubt is desirable, pending such legislation reason demands we decide that a dividend paid to a bank on a policy of group life insurance covering certain mortgagors of real estate be credited to its general assets.

ORVILLE T. RANGER  
Assistant Attorney General

April 9, 1958

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

Re: Maine Maritime Academy

This is in reply to your request to answer several questions posed by the Federal Department of Health, Education and Welfare in connection with the desire of the Maine Maritime Academy to become "covered" under the Old-Age and Survivors' Insurance.

You advise us that a determination by Federal officers as to the eligibility of employees of the Academy can be made only if the Attorney General answers the following questions:

#### QUESTIONS

"(1) The Attorney-General rules

- (a) the Academy is a political subdivision of the State as described in this letter; (juristic entity, legally separate and distinct from the State)
- (b) the Maine Law permits a referendum, and
- (c) the Maine law for purposes of this referendum and Old-Age and Survivors' Insurance coverage permits the Maine State Retirement System, as it applies to this political subdivision, i. e., the Academy, to be deemed a separate retirement system; . . ."

## ANSWERS

(a) The Academy is not a political subdivision of the State as described in the letter from the Department of Health, Education and Welfare.

Insofar as question (a) is answered in the negative, it becomes unnecessary to answer questions (b) and (c), although answers would be favorable in the case of political subdivision.

“Political subdivision” is defined in Chapter 65, Section 2, of the Revised Statutes of 1954, being the State’s Social Security Act, as follows:

“The term ‘political subdivision’ includes an instrumentality of the State of Maine, of one or more of its political subdivisions, the University of Maine, academies, water, sewer and school districts and associations of municipalities, or an instrumentality of the state and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision.”

In 1941, by Chapter 37 of the Private and Special Laws, the “Maine Nautical Training School” was created as a body corporate and politic, having the same rights, privileges and powers as have corporations organized under the general laws.

In 1942 the name of the school was changed to “Maine Maritime Academy,” Chapter 102, Private and Special Laws, 1942.

In 1947, the Academy was declared “to be a public agency of the State of Maine for the purposes for which it was established,” Chapter 24, Private and Special Laws, 1947.

Thus the Academy is a juristic entity and declared by the Legislature to be a public agency of the State. The result, in our opinion, is that the Academy is an instrumentality of the State.

There is a further condition, however, which must be considered. In order to be a “political subdivision,” as defined above, the instrumentality should be “legally separate and distinct from the state. . . .”

The legal connection of the Academy with the State, which differs from other instrumentalities, is the participation of the Academy in the Maine State Retirement System, with the State contributing that share of money to the Retirement System which is ordinarily contributed by the political sub-division itself.

This condition of separateness is, in our opinion, the one point upon which our decision turns.

It will be noted that all bodies embraced within the definition “political subdivision” are bodies which do not belong to the Maine State Retirement System, or if they belong, they pay their own way in that System as participating local districts. A participating local district pays to the Retirement System its contribution on account of its employees together with the pro rata share of the cost of the administration of the Retirement System. Chapter 384, Section 16, subsection IV, Public Laws of 1947, now seen as Chapter 63A, Section 17, sub-

section IV, Revised Statutes of 1954, as amended. The State contributes only on behalf of its employees as defined in the Maine State Retirement Law.

It was in its capacity as an agency of the State, rather than as a participating local district, that the Academy entered the System. The result is that the State of Maine pays the bill for contributions and cost of administration to the System on behalf of the Academy. With respect to this matter the Academy advises through its Executive Secretary in a letter dated December 18, 1957, as follows:

“It was their (Board of Trustees) unanimous opinion that we are entitled to Social Security coverage under recent legislation passed by the 98th Legislature and we do not feel that it was passed contingent on any basis whatsoever. We feel that the State of Maine should continue to pay as it always has done in the past the amount of \$6361.00 as stated in your letter. We do not feel that the Academy in any way is liable or responsible for this payment, and do not intend to make the payment.”

It appears that the Academy is, then, in the somewhat incongruous position of claiming on the one hand to be an agency of the State to whom the State owes an obligation to make contributions on behalf of Academy employees for retirement purposes, but claiming on the other hand, for the purposes of Social Security, that the Academy is a political sub-division of the State and legally separate from the State.

The question facing us can be posed as follows:

“Did the Legislature in enacting Chapter 288, Public Laws of 1957, intend that the Maine Maritime Academy be the only instrumentality in the State of Maine whose participation in the Maine Retirement System was to be paid by the State of Maine, and yet still be eligible to participate in Social Security,

“OR, rather, did the Legislature by its 1957 enactment do no more than place Maine Maritime Academy on the same and equal footing with the other state instrumentalities mentioned in the Maine Social Security Act?” (Chapter 288, Public Laws of 1957, amends Section 1 of Chapter 55 of the Revised Statutes to provide that, “The Provisions of this chapter (of the Social Security Act) shall also apply to employees of the University of Maine and Maine Maritime Academy who are members of an existing retirement or pension system).”

We believe the latter portion of the above question more correctly expresses the intent of the Legislature.

It is impelling upon this office to give such interpretations of law as will, lacking express legislative directions to the contrary, give uniformity to the effect of the law, without discriminating against any of the individuals or classes embraced within that law.

We therefore conclude that, under the law as written, and for as long as the State of Maine continues to pay those expenses of the Academy that normally would be paid by the Academy if they were a political subdivision of the State, the Academy does not conform to the definition of political subdivision as set forth in Chapter 65, Section 2, Revised Statutes of 1954.

JAMES GLYNN FROST  
Deputy Attorney General