

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

Normally such gifts would be accepted by the state under the provisions of Chapter 11, Section 16 of the Revised Statutes of 1954. The gift itself not being in the form of a trust rather an unconditional gift, we are of the opinion that the fund may not be accepted in this manner as a trust but only as an unconditional gift.

We would suggest that the only way in which this fund can be impressed with the trust is for the Legislature to accept the gift and establish the trust.

JAMES GLYNN FROST
Deputy Attorney General

December 12, 1958

To Governor Edmund S. Muskie

Re: Maine Port Authority

Under the provisions of Chapter 5, Section 1 (d) of the Private and Special Laws of 1941:

“With the consent of the governor and council, first obtained, it (Maine Port Authority) may, by vote of its directors: . . .

2: Convey, sell, lease, demise or rent any of its property not required in the discharge or performance of its duties:”

By Section 1 (b) the Authority may buy or otherwise acquire property to be used for its general purposes of operating piers and terminal facilities at Portland.

It is our opinion that the request of the Maine Port Authority for authority to convey a right of way to the Canadian National Railways in exchange for a grant of land by the Canadian National Railways to the Port Authority, is a proper matter for consideration by the Governor and Council.

GEORGE A. WATHEN
Assistant Attorney General

December 29, 1958

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

Re: Division into Two Systems for Social Security Coverage

We have your memo of November 14, 1958, and attached copy of a letter from the Department of Health, Education and Welfare, indicating the need for an opinion of the Attorney General on the following question:

Question: May the Maine State Retirement System, under our present law, be divided for referendum and coverage purposes into two deemed retirement systems in the manner permitted by the Federal law (P. L. c. 85-840, section 316), i.e., into one system composed of the positions of teacher, as the then “teacher” is defined in section 316 of the Federal law, and the other composed of the positions of all employees than teacher as so defined?

Answer. The Maine Retirement System may be divided for referendum and coverage purposes into two deemed retirement systems, one composed of the

positions of teachers, policemen, and firemen, and the other of the positions of all employees other than teachers, policemen and firemen.

The Maine Social Security Act (Chapter 65, R. S. 1954) was originally enacted to enable employees of political subdivisions of the State to participate in the benefits of Social Security in cases where such employees were not members of an existing retirement or pension system.

Subsequently, this Act was amended to permit participation by such employees whether they were members of existing retirement or pension plans or not. Teachers, policemen and firemen, however, were expressly excluded from participation in Social Security.

It is our opinion, inasmuch as such legislation was enacted with full knowledge that certain local subdivisions were members of the Maine Retirement System, that the Maine Retirement System may be deemed to be separate systems with respect to any one or more of the local subdivisions and to all other positions covered by the Maine Retirement System.

Because of the provision that the chapter shall not apply to teachers, policemen or firemen, who are under a state or local government pension or retirement plan, we are compelled to conclude that our system may be deemed to be a separate system as to teachers, as defined in section 316 of the Federal Law, policemen and firemen, and a separate system as to other employees of a local subdivision.

In enacting our Social Security Act, the Legislature said:

“ . . . It is declared to be the policy of the Legislature, subject to the limitations of this chapter, that such steps be taken as to provide such protection to such employees on as broad a basis as is permitted under the Social Security Act.”

Chapter 65, Section 1, R. S. 1954.

We have been (Opinion of Attorney General, October 21, 1954) and are now of the opinion that such statement is adequate authority for the Governor to direct the proper officials to conduct the necessary referendum required by Federal law.

JAMES GLYNN FROST
Deputy Attorney General

December 29, 1958

To R. W. MacDonald, Chief Engineer, Water Improvement Commission

Re: Chapter 79, Revised Statutes of 1954, as amended

We have your memorandum of December 2, 1958, in which you ask this office for an opinion on two questions.

Question No. 1:

“1. Interpretation of “grandfather clause” contained in Section 8.

a. Does an industry moving onto a site formerly occupied by another industry acquire an automatic and unrestricted license if the manufacturing process, and consequently the waste, is (1) entirely different as is the case between a plating