

MAINE STATE LEGISLATURE

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February 23, 1960

James J. George, Sr., Commissioner

H. L. Bradford, Assistant Attorney General

Your Memorandum of February 9, 1960 re Legal Opinion No. 1

The first paragraph of your memorandum reads as follows:

"The question arises in the instance case when an employee retires at a time when he would be allowed to continue working, and there has been no change in his employment with respect to duties assigned, work shifts, and rate of pay, as to whether or not the employee voluntarily quit without good cause attributable to his employment in accordance with the provisions of Section 15,I of the Law."

Your memorandum refers to Legal Opinion No. 1 (as revised under date of April 16, 1956) and requests an opinion as to the applicability of paragraph 2 of said Legal Opinion No. 1 to the question raised by your memorandum of February 9, 1960. As your memo recites, said Legal Opinion No. 1 was withdrawn as a result of exception taken thereto by the Federal Bureau.

In view of the fact of withdrawal of Legal Opinion No. 1, it is my feeling that I should submit my views on the question raised by the above quotation from your memorandum, without reference to Opinion No. 1.

Your memorandum does not state why the employee retires. It is assumed he retires under a plan which pays benefits (pension) even though he could have worked longer had he wished. It is assumed he retired voluntarily.

Unless the reason for retiring is known, whether the reason is "good cause attributable to such employment" cannot be determined.

If the employee retires because he wishes to draw his pension rather than work longer for this employer, it is my opinion he has voluntarily quit without good cause attributable to his employment and Section 15,I shall apply.

If the employee retires because he is no longer able to do the job (which has not changed with respect to duties, work, shifts or pay) his separation is due to his illness or disability, not to the employment. Retirement under such conditions does not constitute one of the "reasons for his absence" of which notice to the employer would serve as taking the first precaution to prevent a separation due to illness or disability from constituting a voluntary quit.

If retirement is for either of the reasons cited in the last two paragraphs above, it is my opinion that the employee should be considered as having voluntarily quit without good cause attributable to his employment and Section 15,I should apply.

cc - Mr. Cloutier
Mr. Cote