

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

July 18, 1961

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

Re: Status National Guard Service under Retirement System

The Board of Trustees of the Maine State Retirement System have requested an opinion as to whether "Prior Service" credits should or should not be granted members of the Maine National Guard.

First we must examine several pertinent provisions of the Revised Statutes. Chapter 63-A, § 1, "Definitions" provides in part:

"'Prior Service' shall mean service rendered prior to the date of establishment of the retirement system for which credit is allowable under the provisions of section 4.

"'Service' shall mean service as an employee, as defined in this section, for which compensation was paid.

"'Employee' shall mean any regular classified or unclassified officer or employee in a department, . . . In all cases of doubt, the board of trustees shall determine whether any person is an employee as defined in this chapter."

Chapter 63, § 11, provides in part:

"*Unclassified service.*—The unclassified service comprises positions held by officers and employees who are:

. . . .
"VI. Officers and enlisted men in the National Guard and naval militia of the State.
. . . ."

There can be no question that an officer or any enlisted man in the national guard or naval militia of the state is an unclassified employee of the state. (See statutory reference above.)

As a state employee such person is eligible for membership in the Maine State Retirement System.

Chapter 63-A, § 1, "Definitions" provides:

"'Member' shall mean any employee included in the membership of the retirement system, as provided in section 3."

Section 3 provides in subsection I:

"Any person who shall become an employee shall become a member of the retirement system as a condition of employment . . ."

We now turn to section 4 of Chapter 63-A to determine whether such persons are eligible for "Prior Service" consideration in accordance with the definition of "Prior Service."

This section in sub-paragraph I provides:

"Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of his membership service, and also, if he has a prior service certificate which is in full force and effect, the period of the service certified on his prior certificate."

Sub-paragraph III provides that under such rules and regulations as the board of trustees shall adopt, each member shall file a detailed statement of all service rendered by him both before and after the applicable date of establishment for which he claims credit.

It seems from an examination of the Maine State Retirement System law that "Prior Service" credits can be granted to members of the Maine National Guard.

GEORGE C. WEST

Deputy Attorney General

July 18, 1961

To: Marion E. Martin, Commissioner of Labor and Industry

Re: Interpretation of Chapter 466, Public Laws of 1955, to Establish Board of Construction Safety Board Rules and Regulations

You have asked for an opinion covering an apparent conflict between parts of Sections 88-B and 88-E of Chapter 466 of the Public Laws of 1955.

Section 88-B provides in part:

" . . . The term 'construction' . . . shall not apply to construction for self use."

It must be borne in mind that this section only *defines* terms or words used in the law. "Definitions" are not a substantive part of the statute. They only assist in understanding the meaning of words and phrases used in a statute.

Section 88-E says in part:

"The provisions relating to safety . . . shall not apply to construction for self use providing not more than 5 persons are employed for wages in such construction or that such construction is not performed by a party for hire under a verbal or written contract."

Section 88-E is a substantive part of the statute. It sets forth exceptions relating to that which the statute shall not cover or extend. Being substantive in nature it is a necessary part of the statute and must be considered as controlling.

In short, the exceptions in Section 88-E are determinative of what the statute does not cover.

GEORGE C. WEST

Deputy Attorney General

July 21, 1961

To: William E. Schumacher, M.D., Director of Bureau of Mental Health

Re: Examination and Commitment costs of Mentally Ill Person — Responsibility for

You have asked, in substance, who is responsible for the costs of examination and commitment of a mentally ill person to a state hospital.

Answer: Sections 137 and 138 of Chapter 27, Revised Statutes of 1954, outlines the channels of financial responsibility for the examination and commitment. Section 137 provides that the town where the mentally ill resided or was found at the time of his arrest is first chargeable. Section 138 then provides that the town first chargeable may recover the amount paid from (1) the mentally ill person, if able, or (2) from persons legally liable for his support or (3) from