

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1961 - 1962

of the system, shall, as far as practicable, correct such record. If any such error results in the receipt from such system by any member or beneficiary of more or less than he would have been entitled to receive had the records been correct, payments shall, as far as practicable, be adjusted in such manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid."

It is my opinion that the failure of the trustees of the retirement system to give prior service credits for Maine National Guard service constitutes an error by the trustees.

Therefore, adjustments in the benefit amount presently being paid to State employees and/or teachers who did not receive, at point of original retirement, credit for National Guard service should now be made, together with retroactive payments to the date of original retirement.

Adjustments should also be made in the case of payments to a beneficiary of a deceased retirant who should have originally been credited with this service.

GEORGE C. WEST

Deputy Attorney General

October 31, 1961

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

Re: Status of "E.R.A." Service

Reference is made to your memo of September 18, 1961. You have asked this office to give the Board of Trustees of the Retirement System an opinion as to whether or not prior service (P.L. 1955, C. 417 § 1) credits toward retirement may be allowed to State employees who are members of the Retirement System for services rendered to the Emergency Relief Administration.

This same question was referred to the Attorney General's office in 1948 and at that time Ralph W. Farris, Sr., Attorney General, ruled that employment by the Emergency Relief Administration was not State employment and, therefore, prior service credits toward retirement were not allowable for such employment. At the moment, I am not prepared to overturn the opinion rendered by Mr. Farris.

I am not sure that what you request is truly a legal question or legal interpretation. The law is very clear that if an individual now in State employ and a member of the Retirement System was employed by the State prior to the beginning of the present Retirement System, he is entitled to prior service credits for such employment. The question of whether such employment was by the State is a question of fact which ultimately must be decided by the Board of Trustees.

It is up to the employee seeking this credit to satisfy the Board of Trustees with proper evidence that his employment by the Emergency Relief Administration was State employment. It might be well to mention four basic criteria which must be met in order for the Board of Trustees to determine that employment was by the State. The items which are set forth may not be the only ones which the Board of Trustees believe are necessary to support a claim of employment by the State. The Board of Trustees may require additional criteria as their discretion.

The four basic criteria which are essential in proving State employment are as follows:

1. The individual was employed in the usual manner by which State employees were hired at the time in question.
2. The employee performed a function for the State.
3. The pay of the employee was received through usual State pay procedures.
4. The funds from which the employee's salary was paid should be State funds or at least partially from that source.

If the Board of Trustees is satisfied that the employee's prior employment meets these four criteria, the Board of Trustees may give him prior service credits. If the employee's employment does not meet these criteria, then he was not an employee of the State and is not entitled to prior service credits.

GEORGE C. WEST

Deputy Attorney General

November 10, 1961

To: Carleton L. Bradbury, Commissioner, Banks and Banking

Re: In-plant banking services

We have your request of October 31 for an opinion in regard to in-plant banking services proposed by Cambridge Consultants, Inc. We understand that you want our opinion as to the legality of a Maine bank conducting services for a corporate client, which services would include taking care of payroll obligations and other clerical assistance made possible through the use of various computers and other machines in the possession of the bank.

We have examined the law with regard to this matter and find that it is now an established principle that a banking corporation may act as an agent, broker or bailee if the exercise of such a function in a particular case and manner may be taken to be legitimately and incidentally connected with the transaction of the banking business.

It is, therefore, our opinion that the services proposed by Cambridge Consultants, Inc. in item number 7 of their original letter to you would be perfectly legal and proper when conducted by a properly licensed Maine banking institution.

THOMAS W. TAVENNER

Assistant Attorney General

November 22, 1961

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Use of School Property at Loring Air Force Base for Sunday School Purposes

This department has been requested to render an opinion relative to the use of school property located on Loring Air Force Base for so-called Sunday School purposes. The situation appears to be as follows: Public buildings owned by the