

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
ATTORNEY GENERAL

for the calender years

1961 - 1962

January 9, 1962

To: Governor John H. Reed

Re: Emergency Interim Successors to Legislature, Administering Oath to

You have asked if the Governor may administer the oath to the emergency interim successors to legislators.

Revised Statutes, chapter 10, section 8-H, provides that "each emergency interim successor shall take the oath required for the legislator to whose powers and duties he is designated to succeed."

The law is silent as to who shall administer this oath. The Constitution of Maine, Article IX, section 1, prescribes the form of oath required to be taken by senators and representatives. It also provides:

"The oaths or affirmations shall be taken and subscribed. . . . by the senators and representatives before the Governor and Council. . . ."

The constitution having provided that the oath by senators and representatives be taken before the Governor and council it would follow that the emergency interim successors to the senators and representatives may have their oath taken before the Governor and council.

GEORGE C. WEST

Deputy Attorney General

January 9, 1962

To: Madge E. Ames, Director Women & Child Labor Division of Labor & Industry Department

Re: Coverage of counter waiters and waitresses under Minimum Wage Law

We have your memo of January 4, 1962, asking for an interpretation of Revised Statutes, chapter 30, section 132-B, III, C.

Originally this section read:

"III. 'Employee' any individual employed or permitted to work by an employer but shall not include;

C. Any individual employed as a waiter, waitress or service employee who receives the major portion of his remuneration in the form of gratuities;"

Section 3, chapter 277, P.L. 1961, amended this section to read in part:

"III. 'Employee' any individual employed or permitted to work by an employer but the following individuals shall be exempt from section 132-A to 132-J except as provided in section 132-A-1:

C. Any individual employed as a waiter, waitress, car hop, not to include counter waiters or waitresses, or those whose tips are required to be divided with others; . . . ."

We interpret this portion of section 132-B, III, C, as if it read:

"C. Any individual employed as a waiter, waitress, or car hop except counter waiters, waitresses and those waiters, waitresses or car hops whose tips are required to be divided with others;"

Counter waiters and waitresses are subject to the minimum wage law.

Waiters, waitresses and car hops whose tips are required to be divided with others are also subject to the minimum wage law.

GEORGE C. WEST

Deputy Attorney General

January 9, 1962

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

Re: Status Under Retirement Law of Certain Commissioned Officers

Reference is made to your memo of December 6, 1961. You are faced with the problem of certain former State employees who have remained in the armed forces since induction or enlistment during World War II. You ask the question whether commissioned officers are entitled to retirement credits since August 28, 1957, being the effective date of Chapter 26, Public Laws of 1957. This chapter reads as follows:

“No such credits shall be allowed to count toward a state retirement benefit beyond the period of first enlistment or induction into the said armed forces unless the individual involved is compelled to continue service under some mandatory provision.”

An amendment to the Personnel Law, Chapter 25, Public Laws of 1957, reads substantially the same.

It therefore follows that a person in the Armed Forces is not entitled to retirement credits after August 28, 1957, unless the individual can present conclusive evidence to the Board of Trustees that such individual was “*compelled* to continue service under some mandatory provision” of the Selective Service Act or any extension or amendment thereof.

GEORGE C. WEST

Deputy Attorney General

January 12, 1962

To: Maine Employment Security Commission

Re: Area Redevelopment Act Program

You have submitted a verbal request relative to the present effectiveness of the opinion of December 31, 1956 by James Glynn Frost, Deputy Attorney General, as applied to a new federal program known as the Area Redevelopment Act Program. The Federal Government has asked whether or not the bond of the Treasurer of the State covers funds transmitted to the State by the Federal Government under this Act.

This office confirms the opinion by James Glynn Frost, former Deputy Attorney General, dated December 31, 1956, and advises that this opinion covers the additional funds coming to the State through the new federal program. It is the opinion of this office that the bond of the State Treasurer does cover the funds received under the provisions of the Area Redevelopment Act Program. I