

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1961 - 1962

Listed below are the departments and their heads who would qualify for membership on the Personnel Board.

DEPARTMENT	HEAD
Adjutant General	Adjutant General
Agriculture	Commissioner
Attorney General	Attorney General
Audit	State Auditor
Banks and Banking	Commissioner
Civil Defense and Public Safety	Director
Division of Veterans Affairs	Director
Economic Development	Commissioner
Education	Commissioner
Employment Security Commission	Chairman
Finance and Administration	Commissioner
Inland Fisheries and Game	Commissioner
Forestry	Commissioner
Health and Welfare	Commissioner
Highway Commission	Chairman
Industrial Accident Commission	Chairman
Insurance	Commissioner
Labor and Industry	Commissioner
Library	State Librarian
Liquor Commission	Chairman
Mental Health and Corrections	Commissioner
Public Utilities Commission	Chairman
Sea and Shore Fisheries	Commissioner
State Police	Chief
Secretary of State	Secretary of State
Treasury Department	State Treasurer

PETER G. RICH

Assistant Attorney General

December 5, 1962

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

Re: Transfer of Credits — Subsec. VIII of Sec. 17 of Chapter 63-A, R.S.

The factual situation is as follows:

An employee of a state department and member of the Maine State Retirement System left state service on March 1, 1946. He immediately became employed by the Maine Turnpike Authority. He did not withdraw his contributions to the Retirement System upon termination of his service as a state employee. On September 1, 1952, the Maine Turnpike Authority affiliated with Maine State Retirement System as a participating local district. The employee, on the same date, rejoined the Maine Retirement System as an employee of the Turnpike Authority. The Turnpike Authority did pick up what is commonly called "Prior Service Credits" for this employee so as to make coverage retroactive to his employment on March 1, 1946.

The question raised is whether or not the credits acquired in state employment to March 1, 1946 can be transferred to the Turnpike Authority so that the employee has coverage continuous from time of first state employment to the present.

Answer: Yes.

First it is necessary to examine the law as it was on March 1, 1946 to determine the status of the employee when he left state employment. R.S. 1944, chapter 60, section 8, provides in part:

"Should a member cease to be an employee except by death or by retirement under the provisions of this chapter, he shall be paid the amount of his contributions, together with such interest thereon, not less than 3/4 of accumulated regular interest, as the board of trustees shall allow;"

Apparently on March 1, 1946, when the employee transferred to the Turnpike Authority, the trustees of the Retirement System should have made a refund of his contributions. They did not do this but allowed him to leave his contribution in the fund. Does this action of the trustees in any way affect the employee's rights?

To answer this question it is necessary to examine the law on September 1, 1952, and see how it affects the employee's rights. R.S. 1954, chapter 64, section 17, II, covers the rights of employees of participating local districts to membership in the retirement system upon the district first joining the system. This provision read the same on September 1, 1952.

"Membership in the retirement system shall be optional with employees in the service of a participating local district on the date when participation of the local district begins, and any employee then in service who elects to join the retirement system within 4 years thereafter shall be entitled to a prior service certificate covering such periods of previous service as shall be certified by the participating local district as creditable prior service rendered to such local district, or to the state, for which the participating local district is willing to make accrued liability contributions."

The facts show that the employee elected to join the system, and the Turnpike Authority did accept his prior service from March 1, 1946, and did pay the required sum into the system. The failure of the trustees of the system to pay back the employee's contributions does not adversely affect his right. His act of rejoining the system cured the error. If he had not rejoined the system a much different result might be reached.

In your memo you mention section 17, VIII, as being a determining factor in this case. It should be pointed out that this particular subsection was first enacted in 1955 when the retirement law was completely rewritten. It was not in effect when this employee left state service in 1946, nor in 1952 when he re-affiliated with the retirement system. As we have consistently pointed out, a new law has no retroactive effect, unless specifically stated. This subsection can only have effect from August 20, 1955.

GEORGE C. WEST

Deputy Attorney General