

# MAINE STATE LEGISLATURE

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January 22, 1964

Earle R. Hayes, Executive Secretary

Retirement

George C. West, Deputy

Attorney General

**Status of Sheriffs' Position under Social Security**

**FACTS:**

Under the Social Security Act a "policeman's position" is eligible for coverage. The Maine Sheriff's Association is interested in this coverage.

**QUESTION:**

Under the laws of Maine are county sheriffs and their deputies considered "policemen" for purposes of coverage under the Social Security Act?

**ANSWER:** Yes.

**REASONS:**

42 U.S.C.A. section 41B (p) provides in its pertinent parts for coverage of a policeman as follows:

"Any agreement with the State of . . . Maine . . . entered into pursuant to this section prior to August 1, 1956 may . . . be modified pursuant to subsection (c) (4) of this section to apply to service performed by employees of such State or any political subdivision thereof in any policeman's . . . position covered by a retirement system . . . ."

The State of Maine definitely comes within the coverage granted by the above. P.L. 1963, chapter 322, amended R.S. chapter 65, sec. 1, by adding thereto the following sentence:

"For the purposes of bringing sheriffs and their deputies under social security, these law enforcement officers shall be deemed policemen."

In order to better understand the intent of the legislature and the meaning of P.L. 1963, ch. 322, it is necessary to examine the statutes and cases which together constitute the laws of the State of Maine.

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First, we will examine the laws relative to policemen. There are two classes of law enforcement officials denominated as "police." First, is the State Police. Second, is the city or municipal police and town constables.

The State Police have several stated duties; (1) patrolling state highways for the purpose of enforcing motor vehicle laws and arresting and prosecuting offenders; (2) aiding the State Highway Commission in enforcing rules, orders and permit regulations; and (3) the members "... are vested with the same powers and duties throughout the several counties of the state as sheriffs have in their respective counties to serve criminal processes, to investigate and prosecute violators of any laws of this state and to arrest the offenders thereof, and also the same power and duty as sheriffs have to arrest without warrant and detain persons found violating or attempting to violate any other penal law of the state until a legal warrant can be obtained."

They are also given "the same rights as sheriffs to require aid in executing the duties of their office." They have other duties relative to serving civil processes. Additionally, the law provides;

"The state police; sheriffs and deputy sheriffs; constables, city marshals, deputy marshals and police officers of cities and towns shall, so far as possible, cooperate in the detection of crime, the arrest and prosecution of criminals and the preservation of law and order throughout the state." R.S. 1954, ch. 15, § 2.

The criminal powers and duties of the State Police are tied to those of sheriffs. By inference all town constables, local police, county sheriffs and State Police are linked together with same or similar powers and duties.

The laws relative to local or municipal police officers and town constables, being the second class of law enforcement officials denominated as "police", will be examined.

R. S. 1954, chapter 90-A, in several sections, sets forth the law relative to municipal police. Under section 4, subsection II, a municipality may enact administrative ordinances establishing police departments under a civil service commission and placing the

chief within such regulations. Section 12 authorizes the raising of money to provide "police protection." Section 52 provides that the municipal officers may appoint, remove, control, and fix compensation of police officers when no regulations as stated in section 4, subsection II, are in effect. This section further provides:

"I. A police officer has all the power of a constable in criminal matters within the limits of the municipality."

R.S. 1954, ch. 147, § 4, provides that "every sheriff, deputy sheriff, constable, city or deputy marshal, or police officer shall arrest and detain persons found violating any law of the state" or ordinance or by-law of a town until a legal warrant can be obtained. They may also arrest when a warrant has been issued though warrant not in their possession. Compare R.S., ch. 15, § 2, supra,

There are scattered throughout the statutes many references to specific situations where constables and municipal police may function. They are too numerous to list and are not particularly necessary for this opinion.

Our Court has commented from time to time upon the position of municipal police in relation to the state, the public, and the local municipality.

The legislature may designate the appointing authority. Cobb v. Portland, 55 Me. 381; Moriarty's Case, 126 Me. 358.

Policemen are considered to be state or public officers because of their duty to enforce the public laws of the state.

"The office of city marshal is not a corporate, nor even a municipal office. . . . The city marshal has other than municipal duties. He has to enforce the laws of the state. He is essentially a state officer, and the people of the whole state are interested to have such legislation, and judicial interpretation, as to his appointment, tenure, and removal, as will secure the most efficient administration of his office." (Emphasis supplied) Andrews v. King, 77 Me. 230.

"The principal duty of police officers, viz, the preservation of the public peace within certain territorial limits, is a matter of public concern, and hence policemen are properly designated as state or public officers. . . ."

"Police officers find their authority in the statute book. In executing authority, policemen are free from control by the appointing power, notwithstanding the municipalities in which they serve are required to pay them." (Emphasis supplied) Moriarty's case, 126 Me. 358 @ 359.

See also Maine v. Fort Fairfield, 99 Me. 177 to the same effect. Thus, we now know that municipal police are state or public officers so far as their law enforcement duties are concerned. They have powers of arrest same or similar to those of sheriffs, R.S. ch. 147, § 4.

Second, we will examine the laws relative to sheriffs.

Sheriffs are referred to as "constitutional officers" because their election, tenure and removal from office are provided in the State Constitution, Article IX, section 10. However, the constitution does not set forth any of the duties of the sheriff and his deputies. Generally, his duties are set forth by statute. Some have been handed down by custom from the ancient common law.

"The office of sheriff is one of the oldest known to the common law. It is inseparably associated with the county. He is the chief executive officer of the state in his county. The office of sheriff is recognized in the earliest annals of English law. It is much older than Magna Charta. Under all systems of government which have recognized the law as the supreme rule of action it has been found absolutely necessary to vest in some one person the ultimate power to preserve the peace and quell disorder and suppress riots, and this person is the sheriff. His power is largely a discretionary one. See Words and Phrases, title "Sheriff." In this state the sheriff is a constitutional officer. By the common law and the statute law he is made responsible as a conservator of the peace and a protection to society against the commission of vice and crime. Sawyer v. County Commissioners, 116 Me. 408 @ 411. See Baker v. Johnson, 41 Me. 23.

There can be no denying the fact that the sheriff has many other duties beyond that of law enforcement. He and his deputies have powers and duties of serving civil precepts. R.S. 1954, ch. 89, § 159. He has the custody and charge of the county jail. Ch. 89, § 174. He must attend superior court. Ch. 106, § 13.



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None the less, the sheriff is the county law enforcement officer. Sawyer v. County Commissioners, supra. The policeman or constable is the law enforcement officer of the municipality. Chapter 90-A, section 52, I. Andrews v. King, supra; Moriarty's case, supra.

What has been said concerning a county sheriff applies equally to his deputies.

"It should be noted that the sheriff and his deputies are one in the enforcement of the laws and protection of the people against infraction of the laws." Moulton v. Scully, 111 Me. 429 @ 442.

Our Court has summed up the relationship between policemen, constables and sheriffs very clearly.

"It (the legislature) has also long conferred upon the police and constables of cities and towns many of the powers of sheriffs for the enforcement of the laws of the State." State Treasurer v. Penobscot County, 107 Me. 345 @ 349.

In enacting P.L. 1963, chapter 322, supra, the legislature did no more than restate the law as it existed at the time of enactment. The amendment is no more than a clarification of existing law.

Hence, it follows that a county sheriff and his deputies are considered "policemen" under the laws of the State of Maine. They should be eligible for coverage under the Social Security Act.

GCW:H

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cc: Hon. Stanley R. Tupper