

MAINE STATE LEGISLATURE

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Maine Employment Security Commission

Date: August 25, 1964

To: Roy U. Sinclair, Chairman

Office: _____

From: Milton L. Bradford, Assistant Att'y. Gen'l. Office:

Subject: Your Memorandum of August 20, 1964, regarding Earnings from Unions

"Will you kindly furnish the Commission with a Legal Opinion re the Application of Section 13, III, Earnings from Unions. Please advise whether or not a claimant's earnings from a union--as for services as a shop steward or union official--should be regarded as 'earnings from his regular employment' or from 'employment other than where regularly employed.'"

The material attached to your memorandum consists of the file on two claimant cases which I would summarize as follows:

Case No. 1. A claimant occupationally classified as a carpenter, working as a self-employed individual also employed as a church janitor for a period of ten or more years at an annual salary of \$1,000, and in addition for a considerable period of time has been recording secretary to his Union, being paid \$5.90 per month.

Case No. 2. A claimant occupationally classified as a pipefitter is also secretary to his Local Union receiving compensation in the amount of \$3.46 per week.

Question: Whether earnings of these two claimants should be deducted under the provisions of Section 13, III of the Maine Employment Security Law?

Answer: Yes.

Opinion: My answer is based on and limited to the facts as I understand them to be in these two cases.

R.S. 1954, Section 13, III, as amended, contains the following language relative to "Weekly benefit for partial unemployment."

"III. Weekly benefit for partial unemployment. On and after October 1, 1962, each eligible individual who is partially unemployed and whose earnings from his regular employment in any week are less than his weekly benefit amount shall be paid with respect to such week a partial benefit equal to the difference between such earnings, disregarding any fraction of a dollar earned, and his weekly benefit amount; except that an individual whose partial earnings are from employment other than where regularly employed shall be paid an amount equal to his weekly benefit amount less that part of his earnings paid, or payable to him, for such week which is in excess of \$10, plus any fraction of a dollar, except that any amounts received by a volunteer fireman, or from the Federal Government by members of the National Guard and Organized Reserve, including base pay and allowances, shall not be deemed to be wages for the purposes of this subsection."

KEEP ALERT FOR VETERAN JOBS

August 25, 1964

"Regular employment" defined in Section 3, XXII, R.S. 1954, as amended, reads as follows:

"XXII. Regular employment. 'Regular employment' means work at the individual's customary trade, occupation, profession or business as opposed to temporary or odd job employment outside of such customary trade, occupation, profession or business."

Notwithstanding the fact an individual may be occupationally classified as a carpenter, pipefitter or heavy-equipment operator, etc., considering the definition of regular employment and the provisions of Section 13,III such individual performing secretarial services for his union, over a period of time, as are the facts above stated, is, in so doing, regularly employed in performing such services even though during the same period he may have earnings from his job as carpenter, pipefitter, or heavy-equipment operator. I can see no reason why a person cannot hold two regular jobs at the same time.

It is to be noted that under Section 13,III the total amount earned in regular employment is to be deducted from the weekly benefit amount except where "partial earnings are from employment other than where regularly employed."

It is my understanding that the job as secretary in each of the summarized cases is one to which each claimant was elected or appointed for a fixed term or until replaced.

In my opinion, the secretary's job in each instance was regular employment within the meaning of the Maine Employment Security Law for the term involved regardless of the amount of time necessary to do it--and was performed by each claimant in the same manner while filing claims as it was at other times.

It is my opinion that the earnings were not "from employment other than where regularly employed" and are, therefore, fully deductible from the weekly benefit amount otherwise payable to each partially unemployed claimant.

MLB:e

cc - Mr. Cote

Mr. George