

# MAINE STATE LEGISLATURE

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December 30, 1964

Earle R. Hayes, Executive Secretary

Maine State Retirement System

George C. West, Deputy

Attorney General

**Status of an Associate Judge or Recorder Relative to  
Social Security**

You have asked this office to determine the status of an Associate Judge or Recorder of a municipal court in a county which has social security coverage for its employees. There are several unusual features about the office as it relates to the particular individual holding it which do not enter into this matter. The main question revolves about the position and not the particular individual.

Originally the office was called a "clerk." In 1953, the office title was changed to "recorder" and the duties were expanded. In the same year the payment of the salary was changed from the City to the County. Since that time the County has paid the salary of the recorder or Associate Judge. The title is not of importance in this case. An attorney who holds the office is called an Associate Judge, a layman holding the office is called a recorder. R.S. 1954, ch. 108, § 3-A.

We find that our court has said that the recorder of a municipal court is not, in the sense contemplated by the constitution, a judicial officer. Morrison v. McDonald, 21 Me. 550. See also State v. LeClair, 86 Me. 522. A recorder is not in the same position as a judge.

The legislature may determine who pays the salary of any positions authorized by it. Andrews v. King, 77 Me. 230. The legislature has the authority to determine who are state employees and what positions are county or municipal employees.

In establishing the Maine State Retirement System, it defined "employees" covered by it. The legislature chose to define "employees" as "any regular classified or unclassified officer or employee in a department" as well as teachers in the public schools. There are some exceptions, not here pertinent. R.S. 1954, ch. 63-A, §1.

The same law sets up so-called participating local districts consisting of counties, municipalities, and quasi-municipal corporations. Employees of such units are eligible under the Maine State Retirement System when the unit has approved participation. When the salary of the position of recorder was paid by the city, the incumbent was a member of the Maine State Retirement System as an employee of a participating local district. He was not eligible as a state employee.

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Again the legislature has set up a civil service system for state employees. The Personnel law defines two types of service, classified and unclassified. In neither is provision made to include recorders of municipal courts. R.S. 1954, ch. 63.

Hence, we must come to the conclusion that a recorder of a municipal court is not a state employee entitled to membership in the Maine State Retirement System, except as an employee of a participating local district. It follows that a recorder is an employee of the political subdivision that pays his salary.

In this instance the position is a county position and has been since 1953.

George C. West  
Deputy Attorney General

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