

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

Director of Mental Health, or during the absence or disability of both of said officials, the director shall perform such duties and have the same powers as provided by law for the commissioner.”

The Director of Corrections is in no manner subordinate to or subject to the supervision of the Director of Probation and Parole in the performance of his duties. He is clearly qualified to be appointed for membership on the board and as a member could direct and delegate certain duties to the Director of Probation and Parole in the same manner as the Commissioner could were the latter to exercise his duties as a Board member.

34 M.R.S.A. § 1675 provides that when a parolee violates a condition of his parole or violates the law a member of the State Probation and Parole Board may authorize the Director of Probation and Parole to issue a warrant for the arrest of said parolee. We see no reason why the Director of Corrections, acting in his capacity as a member of the Probation and Parole Board, could not perform this particular function.

PHILLIP M. KILMISTER  
Assistant Attorney General

October 18, 1967  
Maine State Retirement System

E. L. Walter, Exec. Secretary

Executive Council Service Credit for Members of the Maine State Retirement System.

*FACTS:*

The 103rd Legislature enacted Chapter 57 of the Public Laws. This Chapter reads as follows:

“Sec. 1. R.S., T. 5, § 1001, sub- § 10, amended. The first sentence of sub-section 10 of section 1001 of Title 5 of the Revised Statutes, as amended by section 1 of chapter 339 and by section 7 of chapter 513 both of the public laws of 1965, is further amended to read as follows:

‘ “Employee” shall mean any regular classified or unclassified officer or employee in a department, including teachers in the state colleges and for the purposes of this chapter, teachers in the public schools, but shall not include any member of the Council or any Justice of the Superior Court or Supreme Judicial Court who is now or may be later entitled to retirement benefits under Title 4, section 5, and Title 4, section 103, nor shall it include any Judge of the District Court who is now or may be later entitled to retirement benefits under Title 4, Chapter 5, nor shall it include any member of the State Police who is now entitled to retirement benefits under Title 25, chapter 195.

“Sec. 2, R.S., T. 5, § 1094, sub- § 3, amended. The last paragraph of subsection 3 of section 1094 of Title 5 of the Revised Statutes, as enacted by section 2 of chapter 339 of the public laws of 1965, is amended to read as follows:

‘Any member who has served as a member of either the House of Representatives or the Senate, *or as a member of the Executive Council* of the State of Maine, shall be entitled to receive the appropriate creditable service for such legislative *or Executive Council* service. Any member of the retirement system who does serve as a member of the House of Representatives or the

Senate, *or as a member of the Executive Council*, shall have deductions taken from his salaries and shall be entitled to all applicable rights and benefits of this Title. Any such member shall become entitled to receive time credits for the duration of his election or until such time as he shall officially resign from the House of Representatives or the Senate, *or as a member of the Executive Council*, but in no instance shall he receive more than one year of creditable service in any one-year period.’”

A retired person served two terms on the Executive Council. He served in this capacity and retired from Maine State Retirement System employment before the enactment of P. L. 1967 Chap. 57.

**QUESTION:**

Whether this retired person is included for retirement benefits under P. L. 1967 Chap. 57 by virtue of prior service on the Executive Council?

**ANSWER:**

No.

**OPINION:**

Section 2 of Chapter 57 quoted above uses the word “member” in each of its three sentences. Thus, only “members” who have served on the executive council may receive appropriate creditable service for executive council service.

5 M.R.S.A., section 1001, subsection 12, defines “member”:

“Member” shall mean any employee included in the membership of the retirement system, as provided in section 1091.”

Section 1091, subsection 6, states:

“Should any member withdraw his contributions, *or should he become a beneficiary as a result of his own retirement*, or die, *he shall thereupon cease to be a member.*” (Emphasis supplied.)

The law clearly states a beneficiary or person drawing a retirement allowance is not a “member” of the system. Therefore, we must conclude that such a person may not secure an increase in his retirement allowance because of executive council service.

WARREN E. WINSLOW, JR.  
Assistant Attorney General

October 30, 1967  
Bureau of Taxation

To: Ernest H. Johnson, State Tax Assessor

Subject: Application of Sales and Use Tax Law to Federal Credit Unions and Federal Savings and Loan Companies

**FACTS:**

Your memorandum of September 22, 1967, asks whether Federal Credit Unions and