

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of  
the Maine Attorney General as transferred to  
the Maine State Law and Legislative Reference  
Library on January 19, 2022**

January 8, 1968

E. L. Walter, Exec. Secretary  
Warren E. Winslow, Jr. Assistant  
J. Albert Merryman, Deceased

Maine State Retirement System  
Attorney General

FACTS:

J. Albert Merryman, deceased, was Clerk of Courts for York County at the time of his death. Too, he was a member of the Maine State Retirement System, as accepted by York County. Because York County had not accepted the provisions of the survivor benefit section of the law for its personnel, Mr. Merryman's widow has been denied survivor benefits by the Retirement System. A refund of monies paid into the system, a total of \$1,486.20, has been offered to Mr. Merryman's widow. At this time, it has not been accepted.

QUESTION:

Was J. Albert Merryman, in his capacity as Clerk of Courts for York County, a County employee for the purposes of the Maine State Retirement System survivor benefit program?

ANSWER:

Yes.

OPINION:

It is clear from a study of 4 M.R.S.A. §§ 551, 553 and 554; 30 M.R.S.A. §§ 2 and 201; and Belfast v. Bath, 137 Me. 91, 15 A.2d 249 (1940) that J. Albert Merryman was a County, and not a State, employee at the time of his death.

Under 4 M.R.S.A. § 551, Clerks of Courts were elected by the voters in a given county under the same conditions and rules as county commissioners. (Procedure has been revised by P.L. 1967, c. 419 §§1) Section 551 read previously as follows:

"Clerks of the judicial courts shall be elected and notified, their elections determined and vacancies filled in the same manner, and they shall enter upon the discharge of their duties at the same time as is provided respecting county commissioners, but they shall hold their offices for 4 years."

E. L. Walter

January 8, 1968

Clerks of Courts receive their salaries from the County Treasurers as set forth in 30 M.R.S.A. § 2. Note that County Attorneys receive their salaries from the State:

"The county commissioners, clerks of the judicial courts and their deputies, county treasurers and their deputies, sheriffs, registers of deeds, judges of probate and registers of probate in the several counties shall receive annual salaries from the county treasury in weekly or monthly payments as follows, except that the county attorneys and their assistants shall receive annual salaries from the State Treasury in monthly payments on the last day of each month in a sum which will, in the year's aggregate, most nearly equal the annual salary, as follows, and no other fees, costs or emoluments shall be allowed them;" 30 M.R.S.A. §§ 2, 1st paragraph.

Under 4 M.R.S.A. § 554, compensation for all their services is paid by the county. Clerks of judicial courts are not paid by the State.

"The clerks of the judicial courts in the several counties shall receive annual salaries as set forth in Title 30, section 2.

"The salaries of the clerks of the judicial courts shall be in full compensation for the performance of all duties required of clerks including those performed by them as clerks of the Supreme Judicial Court, the Superior Court and the county commissioners, or by clerks protempore employed by them ..." (Emphasis supplied).

E. L. Walter

January 8, 1968

Under 30 M.R.S.A. § 201: "The clerk of the judicial courts in each county shall be the clerk of the county commissioners . . ." The leading case in the State of Maine in this area is Belfast v Bath, supra. In Belfast, the Court said:

"The clerk of courts is an officer elected by the voters of a county. He serves as clerk for the Supreme Judicial and Superior Courts and the Board of County Commissioners in connection with the work and jurisdiction in such county. He is essentially a county officer . . ." (Emphasis supplied).

Simply because the local clerks serve the Supreme Judicial Court and the Superior Court, as well as the County Commissioners, under 4 M.R.S.A. § 554, and must provide bond to the State under 4 M.R.S.A. § 553, it does not follow that they are state employees. Their functions are both county and state in nature. However, this fact does not change their primary status as county officers.

WEW, Jr./mf

---

Warren E. Winslow, Jr.  
Assistant Attorney General