

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

presented with the proposed terms of the contract in order to learn the extent of supervision which will be exercised over the New York entity by the Commission.)

Unless the contract is completely silent regarding the Commission's supervision over the planning firm (and we cannot envision that the New York entity would not be answerable to the Commission under the terms of the contract), "incompatibility of offices" would result from the stated facts. The common law doctrine of "incompatibility of offices" is expressed in *Howard v. Harrington*, 114 Me. 443, 96 A. 769. (In citing *Howard v. Harrington*, supra, we do not borrow the facts of that case; but, do borrow the expressed doctrine and the reasoning advanced in support of the doctrine.) Clearly, a conflict of interest exists from a situation where, on the one hand, a person sits in a supervisory capacity while, at the same time, holding a position calling for the performance of work subject to that supervision.

In a recent opinion by this office, dated February 15, 1968, we determined that the appointment of an employee of a State college to the State Board of Education would constitute a violation of the common law doctrine of "incompatibility of offices." The facts of that opinion are parallel to the facts given here; and certain of the language there is applicable in this opinion:

"It has been generally decided that the inconsistency, which at common law renders offices incompatible, does not accrue by reason of the physical impossibility to discharge the duties of both offices; but lies, instead, in a conflict of interest, such as when one office is subordinate to the other, and is subject in some degree to the supervisory power of the other. *Russell v. Worcester County*, 232 Mass. 717, 84 N.E. 2d 123; *In Re Opinion of the Justices*, 61 R.I. 197, 21 A. 2d 267 \* \* \*."

Your attention is directed to the provisions of 17 M.R.S.A. § 3104 which provides, among other things, that: "No trustee, superintendent, treasurer or other person holding a place of trust in any state office or public institution of the state, \* \* \* shall be pecuniarily interested directly or indirectly in any contracts made in behalf of the state \* \* \* in which he holds such place of trust, and any contract made in violation hereof is void \* \* \*." The Maine Supreme Judicial Court, in *Lessieur v. Rumford*, 113 Me. 317, 93 A. 838 and *Opinion of the Justices*, 108 Me. 545, 82 A. 90, states that the instant section clearly indicates that it is the policy of the State that persons, whom the law has placed in positions where they may make, or be instrumental in the making, or in superintending the performance of, contracts in which others are interested, should not themselves be personally interested in such contracts.

JOHN W. BENOIT  
Assistant Attorney General

April 4, 1968

State Retirement System

Pension Plans under 5 M.R.S.A. § 1121, sub. 4A

**SYLLABUS:**

A State Prison Guard seeks ½ pay retirement benefits under 5 M.R.S.A. § 1121 sub. 4A. For this he must have 25 years service in "his respective capacity." Time spent on the Rockland Police Force before he became a Prison Guard qualifies under this section as being in "his respective capacity."

*FACTS:*

A guard at the Maine State Prison began work as a guard on May 12, 1946. He has worked as a guard at the State Prison continuously since that date. Before that time, he had no State service.

He worked as a policeman for the City of Rockland for seven and one-half years, before Rockland became a participating district. For his time spent on the Rockland Police Force he has been granted no credit by the State Retirement System.

He entered active military service (Army) on January 27, 1944, and was separated December 2, 1945. For his active Army service, the State Retirement System has granted him a military service credit of one year, ten months, and six days.

He has paid contributions for the time granted him for this active Army service. He has paid nothing for the time spent on the Rockland Police Force.

This guard wishes to retire very soon and would like to qualify for the retirement benefits under 5 M.R.S.A. § 1121, sub. 4A.

*QUESTION:*

Whether this prison guard can qualify for benefits under 5 M.R.S.A. § 1121, sub. 4A.

*ANSWER:*

Yes.

*OPINION:*

5 M.R.S.A. § 1121, sub. 4A reads as follows:

“ A. Any member who

(1) was a member on July 1, 1947 and is the deputy warden, the captain of the guard, or a guard of the State Prison or

(2) Is an airplane pilot employed by the State of Maine; or a member of a fire or police department including the chiefs thereof and sheriffs and deputy sheriffs, and, in any case, *who has at least 25 years of creditable service in his respective capacity*, may be retired on or after the attainment of age 55 on a service retirement allowance.” (emphasis supplied)

The military service credit which this guard received was granted under 5 M.R.S.A. § 1094, sub. 13 which reads as follows:

“Anything to the contrary notwithstanding, military service shall be credited to all state employees who are unable to otherwise qualify for military service credits. A state employee shall be entitled to this credit only if at point of retirement he shall have at least 15 years of membership service in the State Retirement System. The member shall contribute to the retirement system for each year of military service claimed 5% of the earnable compensation paid such member during the first year of state employment subsequent to service in the Armed Forces. Credit for military service under this subsection shall be limited to 4 years. Such credit shall be available to those persons who were separated under conditions other than dishonorable from the Armed Forces of the United States.

It is the intent that these provisions shall apply to all persons, active or retired, but that for those already retired the effective date of any adjustment shall be not

earlier than that date on which such time or credit is certified to the Maine State Retirement System.”

In accordance with an opinion of the Attorney General, dated July 20, 1966, which holds that military service credit should be allowed toward the purchase of retirement for special groups, this credit was granted under section 1121, sub. 4A.

The service rendered to the Rockland Police Department should also be credited under 5 M.R.S.A. § 1211, sub. 4A consistent with an opinion of the Attorney General, dated March 8, 1963, which holds that an individual qualifies for this type retirement if he holds one or more in combination of the jobs enumerated therein. Since the job of a policeman is one of the jobs enumerated in this section, this time should qualify.

As the total time which should be credited this guard is more than twenty-five years, he would qualify under 5 M.R.S.A. § 1121, sub. 4A for a special retirement. Of course, he must pay back contributions for his police duty with the City of Rockland in order to make his twenty-five years.

WARREN E. WINSLOW, JR.  
Assistant Attorney General

April 4, 1968  
State Police

Major Ralph E. Staples, Deputy Chief

Application of longevity pay increases to the pensions of retired State Police Officers and their surviving widows.

*FACTS:*

In your memorandum under date of March 11, 1968 you have formally requested a review of an opinion of this office dated December 18, 1963 which held that retired State Police Officers are not entitled to an increase in retirement pay based upon longevity compensation authorized by the Legislature to be paid to active members of the State Police. Contingent upon a reversal of our 1963 ruling in regard to the applicability of longevity pay increases to retired State Police Officers, you have asked an additional question relative to the applicability of such longevity pay to retirement benefits payable to the surviving widows of retired State Police Officers. Basically the two questions which you pose may be stated as follows:

*QUESTION NO. 1:*

Are State Police Officers retired prior to the date of enactment of the statute authorizing longevity pay to active members of the force, entitled to an increase in their retirement pay based upon longevity pay authorized by such legislation?

*QUESTION NO. 2:*

Are widows of retired State Police Officers, who enlisted prior to July 9, 1943, entitled to an increase in their survivor benefit payments based upon longevity pay applicable to active State Police Officers?