# MAINE STATE LEGISLATURE

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STATE OF MAINE

# REPORT

OF THE

# ATTORNEY GENERAL

For the Years
1967 through 1972

*ANSWER:*

See Opinion.

*OPINION:*

Employees of Gorham State College are in the unclassified service, 5 M.R.S.A. § 711, subsection 8, as amended. A member of the unclassified service does not carry benefits under the Personnel Rules. However, longevity increases were afforded to both classified and unclassified employees pursuant to Chapter 202 of the Private and Special Laws of 1963. The longevity required for a first longevity increase is a total of 8 years' employment with the last five years continuous service, and for the second longevity increase a total of 15 years' service with the last 10 years continuous.

Under the present fact situation there was a break in State service. A classified employee when there is a break in service would not, upon re-entering the classified service, be entitled to his longevity steps he had earned under a longevity policy approved by the State Personnel Board on October 17, 1963. The ninth paragraph of this policy states:

> "Any employee receiving longevity steps will lose such eligibility upon a break in service. The reemployment rate cannot exceed the maximum regular step for the class of employment."

However, after 5 years he would be entitled to his first longevity step.

Section 3 of Chapter 202 of Private and Special Laws of 1963 (the act giving longevity to State employees) requests the authorities responsible for establishing wage rates of unclassified employees not subject to determination by the Governor and Executive Council, to consider similar and equitable treatment as they conclude is appropriate. Therefore, if similar treatment were given to the unclassified employee, he would not be eligible to retain the longevity he had previously earned. However, after 5 years he would be entitled to his first longevity step, just as would a classified employee.

In respect to sick leave credits, the Personnel Rule, Section 11.8, fourth paragraph, provides:

> "A former state employee who is reappointed within four years of his separation from the service under the provisions of the personnel law and these rules, with probationary or permanent status, may have his previously accumulated and unused balance of sick leave revived and placed to his credit upon approval of the new appointing authority."

Pursuant to this paragraph a classified employee can only obtain credit for accumulated and unused sick leave with the approval of the new appointing authority. Therefore, there is a basis in law for denying the transfer of sick leave credits.

Respectfully,

JEROME S. MATUS
Assistant Attorney General

January 17, 1969
Bureau of Taxation

To: Ernest H. Johnson, State Tax Assessor

Subject: Treatment of Joint bank accounts for inheritance tax purposes.

*SYLLABUS:*

SURVIVORSHIP IS NOT PERMITTED OF JOINT BANK ACCOUNTS IN THE NAME OF MORE THAN TWO PARTIES EXCEPT THOSE SPECIFICALLY PERMITTED BY 9 M.R.S.A. § 515(2).

*FACTS:*

Several questions have arisen in the determination of inheritance tax liability in the treatment of joint bank accounts in three or more names.

The statutory provision involved reads as follows:

> "All such accounts, whenever opened, or such shares and accounts in loan and building associations whenever issued, payable to either or the survivor, who are husband and wife, up to, but not exceeding an aggregate value of $10,000, and payable to either of 2 or more or the survivor of those persons who are parent and child, grandparent and grandchild, or brothers and sisters, up to, but not exceeding an aggregate value of $5,000 including interest and dividends, in the name of the same persons in all banks, savings banks, loan and building associations or trust companies within this State shall, in the absence of fraud or undue influence, upon the death of any such persons, become the sole and absolute property of the survivor or survivors, even though the intention of all or any one of the parties be in whole, or in part, testamentary and through a technical joint tenancy be not in law or fact created. The said amount which so becomes the sole and absolute property of the survivor or survivors pursuant to this subsection shall be exclusive of, and in addition to, any amounts to which such survivor or survivors are entitled under common law as contributors to such account or accounts, share or shares." 9 M.R.S.A. § 515(2) as amended by P.L. 1967, C. 386.

*QUESTIONS:*

1. Are the following bank accounts covered by the statute?
   a. Husband, wife and child.
   b. Husband, wife and grandchild.
   c. Husband, wife and grandparent of either.
   d. Husband, wife and brother or sister of either.
   e. Brother, sister and child of either.
   f. Brother, sister and grandchild of either.
   g. Brother, sister and grandparent
   h. Husband, brother of wife and child or grandchild of either.
2. To what are the survivors entitled if the account falls within the scope of the statute?

*ANSWERS:*

1. a. Yes, as an account payable to those persons who are parent and child.
   b. Yes, as an account payable to those persons who are grandparent and grandchild.
   c. No.
   d. No.
   e. No.
   f. No.
   g. Yes, as an account payable to those persons who are grandparent and grandchild.
   h. No.

2. Accounts among parents and children, brothers and sisters, grandparents and grandchildren are subject to the $5,000 limitation. Three party accounts of any other relationship are not entitled to survivorship amounts under the statute.

*REASONS:*

At common law, the creation of a joint bank account required the existence of a valid inter vivos gift, *Hand v. Nickerson,* 148 Me. 465 (1953), in addition to the presence of the four unities. *In re Garland,* 126 Me. 84 (1927).

The present statute is in derogation of the common law. As such, it must be strictly construed. *Stanton v. Trustees of St. Joseph's College,* 233 A2d 718 (1967)

> **** [T]he common law is not to be changed by doubtful implication, be overturned except by clear and unambiguous language, and . . . a statute in derogation of it will not effect a change thereof beyond that clearly indicated either by express terms or by necessary implication. *Chase v. Inhabitants of Litchfield,* 134 Me. 122, 129 (1936).

Therefore, the statutory changes must be construed carefully so they are not applied beyond those situations clearly covered by the language.

There are certain classes of individuals who are permitted to succeed to funds of joint bank accounts. They are (1) husband and wife, (2) parent and child, (3) grandparent and grandchild, and (4) brothers and sisters.

1. An account in the names of husband and wife and their child or children falls within the scope of the statute, but only by reason of the fact that the husband and wife are parents of the child or children. The language which permits survivorship of accounts between husband and wife can not be construed to allow the inclusion of a child so as to permit the passage of $10,000 to the surviving spouse. The $10,000 limit applies only to a two party account between husband and wife.

To permit the survivorship of a three party account among parents and their children, it is necessary to look to the relationship of parent and child and the language "payable to either of two or more or the survivor of those persons who are parent and child." The survivors are permitted to take pursuant to this exception to the common law principle, since the statute clearly abrogated the application of the common law to accounts between parent and child.

The statute does not cover accounts between husband and wife and any of the remaining relationships mentioned unless the husband and wife are also grandparents and the account is with a grandchild. In order for survivorship to be permitted under the statute, the accounts must be in the name of (1) grandparents and grandchildren, or (2) brothers and sisters.

An account in the names of a brother and sister with a child or grandchild of either is not covered by the statute. An account with grandparent and grandchildren (the grandchildren being brother and sister) is covered as an account between grandparent and grandchild. A brother-in-law is not included within the coverage of the statute.

2. Except for two party accounts between husband and wife where the limit of survivorship is $10,000, all other accounts covered by the statute are limited to $5,000. If there are more than two parties, such as, grandparents and several grandchildren, several brothers and sisters, the aggregate amount allowed to pass is still only $5,000 "in the name of the same persons in all banks."

JAMES M. COHEN
Assistant Attorney General