STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

The Court's reasoning above has been followed in recent Maine decisions. *State v. Bryce,* 243 A2d 726 (1968), *State v. Taplin,* 247 A2d 919 (1968). It is the opinion of this office that the doctrine of implied repeal, which has long been recognized by our Court, must be followed.

The legislature in enacting a state income tax made specific provision for certain modifications to federal adjusted gross income. No reference was made as to the includability or excludability of these benefits. It must be assumed that in enacting this law, the legislature was aware of the existence of Title 5 M.R.S.A. § 1003, and that the failure to include these benefit payments within the modifications of § 5122, shows clearly that the Legislature did not intend to exclude these benefit payments from "entire taxable income." One must first look to the statute itself for evidence of legislative intent. *Hunter v. Totman,* 146 Me. 259, 265 (1951). The income tax law does include these benefits. In *Knight v. Aroostook Railroad,* 67 Me. 291 (1877), the Court stated at page 293:

> "This well settled rule of interpretation is founded on the reasonable inference that the legislature cannot be supposed to have intended that there should be two distinct enactments embracing the same subject matter in force at the same time, and that the new statute, being the most recent expression of the legislative will, must be deemed a substitute for previous enactments, and the only one which is to be regarded as having the force of law."

Lastly, it should not be forgotten that taxation is the rule and exemptions from taxation are exceptions to the rule and are to be strictly construed against the individual claiming the exemption. *Inhabitants of Town of Owls Head v. Dodge,* 151 Me. 473.

2. Section 5250 of Chapter 827 of the law requires that "every employer maintaining an office or transacting business within this State and making payment of any *wages* taxable under this part . . . shall deduct and withhold from such wages for each payroll period a tax . . ." (emphasis supplied). Since such retirement benefits are not wages, they are not subject to withholding pursuant to the provisions of § 5250.

WENDELL R. DAVIDSON
Assistant Attorney General

October 16, 1969
Personnel

Willard R. Harris, Director

SYLLABUS:

The decision of the Director of Personnel under 5 M.R.S.A. § 753, subsection 5, adverse to a department or commission, is binding on the department.

FACTS:

A State employee was on "lay-off" status. The department hired another employee in place of the complaining employee. The Director of Personnel in accordance with 5 M.R.S.A. § 753, subsection 5, advised the department head that he had improperly failed to re-employ the employee. The department refused to accept the ruling of the

Director of Personnel.

Title 5 M.R.S.A. § 753, subsection 5 provides as follows:

"5. Appeal to Director of Personnel. If the classified employee is dissatisfied with the decision, following a meeting with the department head, he shall appeal to the Director of Personnel who shall, within 6 working days, reply in writing, to the aggrieved employee and the department head involved in his decision, based on the state's personnel law and rules."

QUESTION:

Is the decision of the Director of Personnel that is provided for in 5 M.R.S.A. §753, subsection 5, binding on State departments?

ANSWER:

Yes.

REASON:

The decision of the Director of Personnel must be based upon the State's personnel law and rules (5 M.R.S.A. §753, subsection 5). The rules in question are established by the personnel board and administered by the director (5 M.R.S.A. §672).

The newly enacted State Employees Appeals Board law (5 M.R.S.A., Ch. 63), of which the aforementioned subsection 5 is a part, essentially provides for an appeal by an employee from a decision that is made *against* his interests. Indeed, the very title of the chapter bears out this theory. The intent of the chapter does not include the proposition that the State departments have a right to appeal.

Inasmuch as the Director of Personnel, acting under the overall direction of the personnel board, administers the personnel law and rules, his decisions are binding upon departments when personnel questions are involved. Of course, pure questions of law must be submitted to the Attorney General's Department.

It is consequently my opinion that the decision of the Director of Personnel under 5 M.R.S.A. §753, subsection 5, is binding on State departments unless and until appealed from under subsection 6 by the aggrieved employee.

HARRY N. STARBRANCH
Assistant Attorney General

October 15, 1969
Inland Fisheries & Game

Ronald T. Speers, Commissioner

Status of Commissioner as a Fish & Game Warden

SYLLABUS:

The Commissioner of Inland Fisheries and Game, who is appointed by the Governor and receives a salary set by statute, cannot be considered to be a Fish and Game Warden, who is appointed by the Commissioner under the Personnel Law, whose compensation is