

# MAINE STATE LEGISLATURE

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April 24, 1970

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Councils of Governments

Maine State Retirement System  
Attorney General

**SYLLABUS:**

The Maine State Retirement System may seek modification of the existing Agreement with Health, Education & Welfare such that employees of Councils of Governments may receive coverage under the Social Security Act.

**FACTS:**

The Greater Portland Council of Governments has applied for social security coverage of its employees. The Office of General Counsel, for the Social Security Administration has advised the Maine State Retirement System that the subject employees may not participate in straight coverage under Title II of the Social Security Act because the council is a public agency within the meaning of 42 USCA § 410 (a) (7). The employees may then be covered only to the extent permitted by the Maine section 218 Agreement and the modifications thereto. The Portland Council now requests the Retirement System to seek modification of the section 218 Agreement to provide their employees with coverage under the Social Security Act.

**QUESTION:**

May the Maine State Retirement System, pursuant to 5 M.R.S.A. § 1223 seek modification of the subject Agreement to enable employees of a Councils of Governments to qualify for coverage under the Social Security Act?

**ANSWER:**

Yes.

**REASON:**

The indirect coverage that is sought by the Council, would necessitate a modification of the special Agreement that was entered into between this State and the Secretary of Health, Education & Welfare, pursuant to 42 USCA § 418.

The State may request that this Agreement be modified to extend

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the coverage to the Council, if the Council meets the requirements of 5 M.R.S.A. § 1223, to wit:

"The state agency ... is authorized to enter ... into an agreement with the Federal Security Administrator, ... for the purpose of extending the benefits ... to employees of any political subdivision of the state ... with respect to services ... which constitute employment ..." (Emphasis supplied)

The first requirement of the above section is that the Council be a political subdivision. The term "political subdivision" is defined as including:

"... an instrumentality of the State of Maine, of one or more of its political subdivisions, ... and associations of municipalities, or an instrumentality of the State and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the State or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the State or subdivision." 5 M.R.S.A. § 1222 (6).

The enabling legislation for Councils of Governments appears at 30 M.R.S.A. § 1981 et seq. and briefly it permits two or more municipalities to enter into an agreement whereby a council is created for the purpose of studying and alleviating local and regional governmental problems.

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In general, the Council may exercise

"... such other powers as are exercised or capable of exercise separately or jointly by the member governments and necessary or desirable for dealing with problems of local concern." 30 M.R.S.A. § 1983 (2).

It is clear that the Councils's functions are governmental in nature and are primarily for the benefit of the participating municipalities. The Council is then acting as an instrumentality of government. Klein v. O'Dwyer, 80 N.Y.S. 343, 192 Misc. 421.

In addition to qualifying, generally, as an instrumentality under section 1222, it must

(1) Be a juristic entity, (2) be legally separate and distinct from the State or subdivision and (3) its employees must not be employees of the State or subdivision.

1. Juristic entity. The term juristic entity or legal entity signifies either a natural person, an artificial person or a quasi-artificial person. Parker v. Unemployment Compensation Com'n., 214 S.W. 2d 529, 358 Mo. 365 (1948). The artificial person and quasi-artificial person must derive any legal status from an Act of the Legislature, evidencing an intent that the entity shall enjoy that status.

In the case of Councils of Governments the Legislature expressed its intention in the form of enabling legislation which permits such Councils to assume liabilities and obligations, to create standing committees, to take title to assets, to employ staff and, in general, to exercise the powers of

the member municipalities, in dealing with problems of local concern. Although the Legislature did not employ the usual provision that gives an entity the specific authority to sue and be sued in its official name, it did express a general intent to vest the Council with the attributes which ordinarily attach to legal entities, and in particular municipal corporations. In conclusion the Greater Portland Councils of Governments is a juristic entity.

2. Legally Separate. Although the participating municipalities do control the Council through the officers they select to represent them, the Council is nevertheless governed by its own bylaws, hires and controls its own employees and is not an integral part of any particular municipality. It is separate and distinct from the State or any political subdivision.

3. Employees. The enabling legislation provides that: "The Council may employ such staff, and consult and retain such experts, as it deems necessary." 30 M.R.S.A. § 1985. For this reason and for the reasons mentioned in paragraphs (1) and (2), above, it is clear that employees of the Council are not by reason of their employment relationship employees of the state or subdivision.

The council is then a "political subdivision" within the meaning of 5 M.R.S.A. § 1223. In addition to being a "political subdivision" the services performed for the council must also constitute "employment" within the meaning of 5 M.R.S.A. § 1222 (3).

The term "employment" in § 1222 (3) is defined as:

" . . . any service performed by an employee of any political subdivision . . . except service which in the absence of an agreement entered into under this chapter would constitute 'employment' as defined by the Social Security Act..."

It would appear that this requirement is satisfied since we have a memo dated February 16, 1970 from the Office of General Counsel to the Social Security Administration wherein it is stated that:

"Consequently, services performed for such a council are barred from .... 'straight coverage' under Title II of the Social Security Act by virtue of section 210 (a) (7) thereof (42 USCA 410 (a) (7) and are or may be covered under Title II only to the extent permitted by the Maine Section 218 Agreement and the modifications thereto." Page 3.

In conclusion, the Maine State Retirement System may request that the Agreement with the Secretary of Health, Education & Welfare be modified to extend social security coverage to employees of the greater Portland Council of Governments formed pursuant to Title 30, chapter 204 of the Maine Revised Statutes Annotated.

CNH/mf

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