

# 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**

July 29, 1970

E. L. Walter, Executive Secretary

Maine State Retirement System

Clayton N. Howard, Assistant

Attorney General

Brunswick Housing Authority - Political Subdivision.

**SYLLABUS:**

The Maine State Retirement System may seek modification of the existing agreement with Health, Education and Welfare such that employees of the Brunswick Housing Authority may receive coverage under the Social Security Act.

**FACTS:**

The Brunswick Housing Authority has applied for Social Security coverage of its employees under the § 218 Agreement entered into between this State's Retirement System and Health, Education and Welfare.

**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 the Brunswick Housing Authority to qualify for coverage under the Social Security Act?

**ANSWER:**

Yes.

**REASON:**

In my Opinion dated April 24, 1970 it was pointed out that the following statutory criteria must be satisfied if the State agency is to seek modification of the § 218 Agreement. A discussion of the satisfaction of those criteria follow:

1. Instrumentality: The enabling legislation, at the time the Brunswick Housing Authority was adopted by the Town of Brunswick, in March of 1965, provided as follows:

"In each city and in each town there is created a public body corporate and politic . . . Such authority shall not transact any business or exercise its powers unless the governing body of the city or the annual meeting of the town . . . By proper resolution shall declare that there is need for an authority to function in such city or town. . . ."  
30 M.R.S.A. § 4601.

It is apparent that the Legislature has created the authority as a body public and politic with functions governmental in nature connected with the administration of government. Furthermore, it is not a mere agency of any city or town but rather it is a quasi-municipal corporation, created by the Legislature, and activated by the municipality. See Opinion of Attorney General dated 9/29/61, Woodward v. Livermore Falls Water District, 100 A. 317, 319, 116 Me. 86, People ex rel. Stokes v. Newton, 101 P.2d 21, 106 Colo. 61 (Denver Housing Authority). The Authority is then an instrumentality within the meaning of 5 M.R.S.A. § 1222(6).

2. Juristic Entity: As a body public and corporate the Brunswick Housing Authority is a juristic entity. The Authority may be activated when a town strictly complies with the statutory prerequisites contained in the enabling legislation of 30 M.R.S.A. § 4601.

3. Legally Separate: The Authority is not, as mentioned in paragraph (1), an agency of any subdivision but instead enjoys a separate corporate existence from the State or any subdivision.

4. Employees: The employees of the Brunswick Housing Authority are employed by the Authority through its appointed commissioners. Although the commissioners are appointed by the town selectmen, the commissioners, during their appointment, are not subject to the control of the town or its officers. The employees of the Authority are, therefore, not employees of the State or any subdivision.

5. Employment: The services which the Brunswick Housing Authority employees perform must be employment not otherwise covered by the Social Security Act. It would appear that this question involves an interpretation of a Federal Act which should properly be left to those individuals charged with that function.

July 29, 1970

In conclusion, the Maine State Retirement System may seek modification of the section 218 Agreement with Health, Education and Welfare to enable the members of the Brunswick Housing Authority to participate in coverage under the Social Security Act.

It will be incumbent upon Health, Education and Welfare or General Counsel to the Social Security Administration to determine whether the employment would be barred from "straight" coverage. Whether or not the employment of the Brunswick Housing Authority's employees is not otherwise covered under the Social Security Act is an issue that must be resolved by Health, Education and Welfare when they have the application for a modification before them.

---

CLAYTON E. HOWARD  
Assistant Attorney General

CNH/ec