

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

November 24, 1970
Inland Fisheries and Game

Maynard F. Marsh, Deputy Commissioner

SYLLABUS:

A game warden pilot may not be permitted to continue in State service as a pilot beyond age 60, but he may be permitted to continue in State service as a game warden until age 63 to attain 25 years of State service.

FACTS:

Subject was first employed by the Department of Inland Fisheries and Game on July 31, 1949. Since that date, he has served most of the time in the capacity of a Game Warden Pilot. Subject will reach age 60 on February 27, 1971, at which time he will have less than 25 years of creditable service.

QUESTION:

Can a Game Warden Pilot continue in the service of the Department of Inland Fisheries and Game until he reaches age 63 in order to obtain the necessary 25 years of service to be retired at half pay retirement?

ANSWER:

Yes, but only as a game warden and not as a pilot.

REASONS:

Prior to enactment of Chapter 445 of the Public Laws of 1965 "a warden in the Department of Inland Fisheries and Game" and "an airplane pilot employed by the State of Maine" were compelled to retire upon "the attainment of age 60." 5 M.R.S.A. § 1121, subsection 4. However, section 3, Chapter 445 of the Public Laws of 1965 amended 5 M.R.S.A. §1121, subsection 4, paragraph A, subparagraph 1, by deleting therefrom the words:

"or a warden in the Department of Inland Fisheries and Game, or a warden of the Department of Sea and Shore Fisheries."

Section 3 of Chapter 445 of the Public Laws of 1965 also amended 5 M.R.S.A. §1121, subsection 1, by adding thereto a new paragraph D, which reads:

"D. Any law enforcement officer in the Department of Inland Fisheries and Game and any law enforcement officer in the Department of Sea and Shore Fisheries may retire at attained age 50 or upon completion of 25 years of total creditable service as a law enforcement officer in the Department of Inland Fisheries and Game or a law enforcement officer in the Department of Sea and Shore Fisheries, whichever is the later. Retirement shall be compulsory at the attainment of age 60. Except that any law enforcement officer in the Department of Inland Fisheries and Game and any law enforcement officer in the Department of Sea and Shore Fisheries who will not attain the 25 years of creditable service at age 60 may be permitted to continue in his employment until age 63 in order to

obtain the 25 years of creditable service necessary”

It is apparent that the subject individual occupies dual roles: (1) A “law enforcement officer in the Department of Inland Fisheries and Game.” (5 M.R.S.A. § 1121, subsection 1, paragraph D); and (2) “an airplane pilot employed by the State of Maine.” (5 M.R.S.A. § 1121, subsection 4, paragraph A, subparagraph (2).) It is equally clear that prior to the above-described amendments of 5 M.R.S.A. § 1121, a person occupying either of these roles was subject to compulsory retirement at age 60. After the foregoing amendments, the pilot is subject to compulsory retirement at age 60, but the game warden may be permitted to continue “until age 63 in order to obtain the 25 years of creditable service necessary.”

Since both functions are vested in the one individual, a conflict in statutory provisions arises. A cardinal rule of statutory construction states:

“A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error.” Sutherland, *Statutory Construction*, 3rd Edition, Section 4705.

The dual functions, of game warden and pilot, occupied by subject individual, appear to be severable. Therefore, when the above-quoted rule of construction is applied to the problem presented, it is apparent that subject individual may be permitted to continue as a game warden until age 63 in order to attain 25 years of State service; however, he may not be permitted to continue in the function of a pilot employed by the State beyond age 60. This construction gives full, operative effect to both sections of the above-quoted statute. It also conforms to the fairly implicit legislative purpose to liberalize the age limitation upon game wardens but to maintain the prior limitation upon pilot age. This legislative distinction appears to be reasonable.

Accordingly, it is concluded that in the absence of a “request of the Governor with the approval of the Council,” pursuant to 5 M.R.S.A. § 1121, subsection 4, paragraph B, the subject individual may not be permitted to continue in State employment as an airplane pilot beyond age 60. However, it is also concluded that the subject individual may be permitted to continue in State employment as a game warden until he reaches age 63 in order to attain 25 years of State service.

It should be noted that 5 M.R.S.A. § 1121, subsection 4, paragraph B, provides the following alternative with regard to pilots:

“Retirement shall be compulsory at the attainment of age 60 except that on the request of the Governor with the approval of the Council, the board of trustees may permit the continuation for periods of one year, as the result of each such request, of the service of such member.”

Accordingly, if the Department of Inland Fisheries and Game especially desired to continue subject individual in the dual roles of game warden pilot, from year to year, it could submit a request to the Governor to seek the above-quoted exceptional action.

CHARLES R. LAROUCHE
Assistant Attorney General

December 3, 1970
Indian Affairs

James H. Murphy, Commissioner

Vacancy in Seat of Representative of Penobscot Indian Tribe