

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 23, 1971

Edward L. Walter, Executive Secretary

Retirement

Clayton N. Howard, Assistant

Attorney General

State Police and Wardens - 20 year retirement provision,
5 M.R.S.A. § 1121.

SYLLABUS:

A member of the State Police for 18 years may not include his 5 years as a law enforcement officer in the Department of Inland Fisheries and Game for purposes of satisfying the 20-year service requirement for retirement at half pay.

FACTS:

A member of the State Police, who became a member subsequent to July 9, 1943, has completed 18 years of creditable service as a State Police officer. The same individual has also had 5 years creditable service as a Game Warden for the Department of Inland Fisheries and Game, and now wishes to combine the time spent as a warden with his time spent as a State Police officer to meet the 20-year requirement for retirement at half pay.

QUESTION:

Whether a State Police officer may tack on or add his service time as a Game Warden to his service time as a State Police officer in determining whether the 20-year service requirement for half pay has been met.

ANSWER:

No.

REASON:

The retirement laws provide in pertinent part as follows:

State Police

"Any member of the State Police who became a member of that department subsequent to July 9, 1943 may retire upon completion of 20 years of creditable service as a State Police officer... The . . . retirement allowance. . . shall be equal to 1/2 of his current annual salary."
5 M.R.S.A. § 1121 (1) (C). (Underlining added.)

Game Warden

"Any law enforcement officer in the Department of Inland Fisheries and Game . . . may retire upon completion of 20 years of creditable service as a law enforcement officer in the Department of Inland Fisheries and Game. . . . The total amount of the service retirement allowance of a law enforcement officer retired in accordance with this paragraph shall be equal to 1/2 of his current annual salary." P.L., 1971, c. 520.
(Underlining added.)

The above-quoted section 1121(1)(C) expressly refers to a "member of the State Police" and one who has completed "20 years of creditable service as a State Police officer", while Chapter 520 expressly refers to a "law enforcement officer in the Department of Inland Fisheries and Game" who has completed "20 years of creditable service as a law enforcement officer in the Department of Inland Fisheries and Game". I am unable to detect any legislative intent to treat the service time as a Game Warden as time served as a State Police officer.

Although the length of service required for retirement in each capacity is now 20 years, that similarity standing alone is insufficient justification for disregarding the clear and express language of the statute.

It is not inconceivable that the Legislature intentionally made a distinction between the two services. It is reasonable to assume that the Legislature designed the statute for the purpose of enticing trained police officers to continue on as police officers for 20 years instead of encouraging the officers to leave sooner by allowing them to add their service time to the time served as a Game Warden.

Regardless of the merits or wisdom of such reasoning, the clear and distinct divisions between the two types of service are not to be readily disregarded.

I have considered our earlier opinion to the Retirement System, dated March 8, 1963, a copy of which appears as Exhibit A hereto, where we did conclude that a state police officer could include his prior service time as a guard at the State Prison for purposes of satisfying the 20 year requirement. I do not consider that opinion as controlling in the present case because the language of that statute was significantly different from the language of the above quoted section. The statute which was interpreted in that 1963 opinion referred to "Any member who

1. Was a . . . guard of the State Prison. . . or 2. . . a member of the State Police. . ." Chapter 63-A, § 6 IV, R.S. 1954.

July 23, 1971

The opinion concluded that since the statute spoke of the two categories together and used the express language ". . . in any case . . ." the legislature had intended to include both positions in determining whether the 20 year service requirement was satisfied.

Shortly after that 1963 opinion in that same year, the legislature amended that statute by separating the state police from the guards and others by adding a new subparagraph dealing solely with State Police. See Chap. 377, Public Laws, 1963. It must be assumed that the legislature made that change with knowledge of that 1963 opinion. If the legislature now intended to have the service as a game warden included for a State Police officer, it could do so with language similar to that used in the statute under consideration at the time of the 1963 opinion.

Absent any such language, it must be concluded that a State Police Officer may not include his prior years of service as a game warden for the purpose of satisfying the 20 year requirement for retirement at 1/2 pay.

Clayton N. Howard
Assistant Attorney General

CNH:mfe
enc.

March 8, 1968

To: Earle B. Hayes, Executive Secretary, Maine State Retirement System
 Re: Chapter 63-A, R. S. as amended, Section 6, subsection IV.

We are in receipt of your request for an opinion based on the following facts, as they have been submitted to us by your Department.

"A member of the State Police who has had, up to now, a total of approximately 18 years of service in that Department and who also had some 8 years of service as a guard at the Maine State Prison prior to his affiliation with the Maine State Police Department is now asking as to whether or not he can qualify for the half pay retirement benefit provided for in Chapter 63-A, § 6 IV, R. S. 1954, as amended."

Chapter 63-A, section 6, subsection IV-A, reads as follows:

"A. Any member who

"1. Was a member on July 1, 1947 and is the deputy warden, the captain of the guard, or a guard of the state prison; or a warden in the department of inland fisheries and game, or a warden of the department of sea and shore fisheries, or

"2. Is a member of the state police, including the chief thereof, and who became a member of that department subsequent to July 9, 1943; an airplane pilot employed by the state of Maine; or a member of a fire or police department including the chiefs thereof and sheriffs and deputy sheriffs, and, in any case, who has at least 25 years of creditable service in his respective capacity, may be retired on or after the attainment of age 55 on a service retirement allowance."

The employee in question began his state employment on 8 August 1937 and has been continuously employed through the present time. When the State Retirement System came into effect in 1942, this employee became a member. From 1937 until 1945 this employee worked as a guard at the Maine State Prison, and from 1945 until the present, he has been a member of the Maine State Police.

It is our opinion that the employee in question clearly falls within the mandate of section 6, subsection IV-A. He was a member on July 1, 1947 as a guard; he became a member of the State Police subsequent to July 9, 1943; he has at least 25 years of creditable service; service has been continuous from 1937.

I specifically call your attention to the last few lines of section 6, subsection IV-A, number 2, where it states:

" . . . in any case, who has at least 25 years of creditable service in his respective capacity . . . "

There is nothing in section 6, subsection IV-A, number 2 that is intended to mean that an employee must stay in one specific job, as enumerated, for the full tenure of service. The job of a guard, and the job of a state police officer are both enumerated within the above mentioned section. Had the employee in question been either a guard or a state police officer exclusively, for the full tenure of his service, there would be no question as to his retirement eligibility. It is, therefore, our opinion that the Legislature did not intend to divest any employee of his retirement benefits if he were to transfer from one department in the state to another department, both being specifically enumerated in the above-mentioned statute.

WAYNE B. HOLLINGSWORTH
 Assistant Attorney General