

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)

STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

REASON:

29 M.R.S.A. § 783, subsection 5, paragraph F, provides that the requirements of furnishing proof of financial responsibility under § 783, subsection 2, do not apply to the owner or operator of a motor vehicle involved in an accident if the owner had in effect an automobile liability policy with respect to the motor vehicle; nor to such operator, if not the owner, if there was in effect a liability policy with respect to his operation of motor vehicles not owned by him, nor to such operator or owner if the liability of such operator or owner for damages is, in the judgment of the Secretary of State, covered by any other form of liability insurance policy.

Although Mrs. A did not have a liability insurance policy in effect at the time of the accident, her son did have a policy which covered his operation of her vehicle. Had the son's insurance company been called upon, it would have been responsible for damages by reason of his negligence. Although a general release was obtained by Mrs. A's husband, rather than through the insurance company, the question of payment of any damages by her was resolved by the settlement, and the Secretary of State could determine that Mrs. A's liability would have been covered by the son's policy.

Such determination having been made by the Secretary of State, subsection 5, paragraph F, provides that the security and financial responsibility requirements of subsection 2 do not apply. Question 2 is, therefore, answered in the affirmative.

Question 3 must be answered in the negative. Having in effect determined that the provisions of section 2 do not apply to Mrs. A, the Secretary of State then has no option remaining, and may not require her to obtain and maintain insurance.

LEON V. WALKER, JR.
Assistant Attorney General

July 28, 1971
Retirement

E. L. Walter, Executive Secretary

Retirement benefits from both Retirement System and from the Judiciary Retirement Plan

SYLLABUS:

A Justice of the Superior Court may not receive retirement benefits from both the Retirement System and the Retirement Plan for the Judiciary.

FACTS:

A Justice of the Superior Court has applied for membership in the State Retirement System seeking to establish credit for his service as a legislator from 1947 to 1958 and as a member of the Executive Council from 1959 to 1960.

QUESTION:

Whether a Justice of the Superior Court may receive retirement benefits from both the Retirement System and the Judiciary Plan.

ANSWER:

No.

REASON:

The Legislature has provided that:

“Any member who has served as a member of either the House of Representatives or the Senate, or as a member of the Executive Council of the State of Maine, shall be entitled to receive the appropriate creditable service for such legislative or Executive Council service.” 5 M.R.S.A. § 1094 (3).

The Justice who has applied for membership based on his service in the legislature and on the Executive Council is applying for credit for service performed prior to the effective date of the above quoted legislation. The above statute refers to “Any member who . . .”. “Member”, for purposes of the Retirement System, is defined as:

“12. Member. ‘Member’ shall mean any *employee* included in the membership of the Retirement System, as provided in section 1091.” 5 M.R.S.A. § 1001.

“Employee” is then defined as:

“10. Employee. ‘Employee’ shall mean any regular classified or unclassified officer or employee in a department . . . but shall not include any Justice of the Superior Court . . . who is now or may be later entitled to retirement benefits under Title 4, section 5 . . .”. 5 M.R.S.A. § 1001.

The Justice in question could not be an employee because he is either “now or may be later entitled to retirement benefits under Title 4 . . .”. Therefore, he is not now nor may he later become a “member” for the purposes of Section 1094, subsection 3 quoted above.

A Justice of the Superior Court may not participate in the State Retirement System while at the same time participating in the Retirement Plan, for Superior Court Justices.

CLAYTON N. HOWARD
Assistant Attorney General

August 6, 1971
Aeronautics

Linwood F. Wright, Director

Regulations of Augusta State Airport.

SYLLABUS:

The Director of Aeronautics may establish regulations for the Augusta State Airport governing aircraft traffic patterns, aircraft surface movement, aircraft parking and motor vehicle operation.

FACTS:

The Department of Aeronautics desires to establish certain rules and regulations for the Augusta State Airport. The rules and regulations would include, but not be limited to, those relating to aircraft traffic patterns, aircraft surface movement, aircraft parking