

MAINE STATE LEGISLATURE

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March 28, 1972

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Retirement - Municipal Court Judge

SYLLABUS:

Service as a municipal court judge during 1958 to 1962 is creditable service as a State "employee" within the meaning of 5 M.R.S.A. § 1091, since such a person was then an officer in the judicial department, and, hence, an "employee" as defined in 5 M.R.S.A. § 1001, subsection 10, which judicial position was not excluded therefrom.

FACTS:

Stated in the question.

QUESTION:

Whether service as a municipal court judge during 1958 to 1962 is creditable service as a State "employee" within the meaning of 5 M.R.S.A. § 1091?

ANSWER:

Yes.

REASONS:

5 M.R.S.A. § 1001, subsection 10, currently defines employee as follows:

"'Employee' shall mean any regular classified or unclassified officer or employee in a department, including, for the purposes of this chapter, teachers in the public schools, but shall not include any Justice of the Superior Court or Supreme Judicial Court who is now or may be later entitled to retirement benefits under Title 4, section 5 and Title 4, section 103, nor shall it include any Judge of the District Court who is now or may be later entitled to retirement benefits under Title 4, chapter 5, nor shall it include any member of the State Police who is now entitled to retirement benefits under Title 25, chapter 195. Persons serving during any probationary period required under the Personnel Law and

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rules of the Personnel Board shall be deemed regular employees for purposes of this definition. In all cases of doubt, the board of trustees shall determine whether any person is an employee as defined in this chapter."

During the period involved, a municipal court judge was an officer of the judicial department, appointed by the executive power under then existing Article VI, Section 8 of the Constitution of Maine, and paid a salary by the State. Hence, such position is included within the general definition of "employee," and it is not removed therefrom by any of the exclusionary provisions of subsection 10, Section 1001 of Title 5. Such definition was essentially the same in all pertinent respects during the period in question.

It is noted that former Attorney General Frank I. Cowan in an opinion to then Governor Sewall, dated July 29, 1942, stated:

"These Judges of Municipal and Police Courts, when paid a salary, must necessarily be recognized as State employees."

He came to a different conclusion as to

"Judges and Registers of Probate" because they were then "elected by the people of the county and there is nothing to justify considering them as State employees."

This opinion is consistent with an opinion issued by this Office on December 30, 1964 wherein it was held that an "Associate Judge or Recorder of a Municipal Court" was not a State employee, based in part upon prior holdings by the Law Court that such official was not a judicial officer in the sense contemplated by the constitution. See R.S. 1954, ch. 108, 3-A; Morrison v. McDonald, 21 Me. 550; and State v. LeClair, 86 Me. 522.

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CRL:mfe