

# 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**

RCW JRE ✓  
June 6, 1972

E. L. Walter, Executive Director

Maine State Retirement System

Charles R. Larouche, Assistant

Attorney General

Retirement - Board of Registration in Medicine

SYLLABUS:

Members of the Board of Registration in Medicine, including its Secretary, are eligible for membership in the Maine State Retirement System. Other personnel of that Board are also eligible for such membership if the Board of Trustees, Maine State Retirement System, find that each such individual is in fact a regular employee. Service in those capacities by such individuals prior to June 9, 1972, is creditable.

FACTS:

Each of the following questions relate to the Board of Registration in Medicine and the eligibility of certain of the personnel of that Board under 5 M.R.S.A. § 1001, subsection 10.

QUESTIONS:

1. Are the members of the Board eligible to membership in the Retirement System?
2. Is the secretary eligible to membership in the Retirement System?
3. Would other personnel be eligible to membership in the Retirement System?
4. If the answers to all or any of the above questions in the affirmative, can any service rendered prior to June 9, 1972 be available?

ANSWERS:

1. Yes.
2. Yes.
3. Yes, but see "REASONS".
4. Yes, but see "REASONS".

REASONS:

5 M.R.S.A. § 1001, subsection 10, provides:

"'Employee' shall mean any regular classified or unclassified officer or employee in a department. . . In all cases of doubt, the board of trustees shall determine whether any person is an employee as defined in this chapter."

5 M.R.S.A. § 1032 provides:

"The board of trustees shall make the final and determining decision on all matters pertaining to administration, . . ."

5 M.R.S.A. § 1001, subsection 8, provides:

"'Department' shall mean any department, commission, institution or agency of the State Government."

5 M.R.S.A. § 2301, subsection 1, lists the Board of Registration in Medicine as an "agency" under the Administrative Code.

It is apparent that the Board of Registration in Medicine is a "department" within the meaning of that word as used in 5 M.R.S.A. § 1001, subsection 10. Accordingly, any person whose relationship with that Board constitutes him an "employee" as that word is used in Section 1001, subsection 10, is entitled to membership in the Maine State Retirement System.

The first question concerns eligibility of "members" of the Board of Registration in Medicine to be members of the Maine State Retirement System. The statutory definition of "employees" expressly includes officers in the unclassified service. 5 M.R.S.A. § 711, subsection 3, expressly includes in the unclassified service members of boards who are required by law to be appointed by the Governor with the advice and consent of the Council. It also appears that the Board members are paid annual salaries. See 32 M.R.S.A. § 3263 and 5 M.R.S.A. § 1091. Accordingly, the Board members are eligible for membership in the Retirement System.

June 6, 1972

The second question concerns eligibility of the Secretary of the Board. Since he is also a member of the Board, he is eligible by force of such membership and is not disqualified by reason of his secretarial function.

The third question concerns eligibility of "other personnel" of the Board to membership in the Retirement System. We have answered this question "yes," but only upon the assumption that such "other personnel" are in fact "regular employees" of the Board of Registration in Medicine. However, before approving an application for membership in the Retirement System, the Board of Trustees, Maine State Retirement System, which has the duty of making the final judgment on this "fact," should require satisfactory proof that each such "other personnel" is in fact a "regular employee" of the Board of Registration in Medicine. It should also be noted that 5 M.R.S.A. § 1091, subsection 4, authorizes the Board of Trustees to exclude from membership classes of employees who are temporary or on other than a per annum basis.

The fourth question asks whether any service rendered prior to June 9, 1972, the effective date of Chapter 591, P.L., 1971, would be creditable to the persons involved in the first three questions. This Board was in existence prior to this Act (Chapter 47, Title 32, Revised Statutes), and the provisions relating to the status of this Board as a "department" and of the status of the individuals specified in the three first questions as "employees," within the meaning of 5 M.R.S.A. § 1001, subsection 10, are essentially the same as in the new Act, in all pertinent respects. Hence, the preceding rationale is applicable to the fourth question.

---

CHARLES R. LAROCHE  
Assistant Attorney General

CRL:mfe