

MAINE STATE LEGISLATURE

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November 22, 1972

Col. Parker F. Hennessey
Commissioner of Public Safety
W. S. Brodrick
Assistant Attorney General
OPINION OF THE ATTORNEY GENERAL

SYLLABUS:

State police officers who enlisted prior to January 10, 1943, cannot be forced to retire simply because they have reached Age 70. They can be dismissed, but only for "cause" pursuant to the Civil Service Statutes.

FACTS:

Certain current members of the Maine State Police enlisted with the force prior to January 10, 1943. These members have either reached or are soon to reach age 70. These men are members of a retirement plan set up by 25 M.R.S.A. §1591. This plan is separate from the State Retirement System set up by 5 M.R.S.A. §1001 et. seq., which covers all state police officers who enlisted subsequent to January 10, 1943. The latter system contains a mandatory retirement age of 70. 5 M.R.S.A. §1121(1). The former retirement plan, covering the officers who are the subject of this memo, contains no mandatory retirement age. All state police officers, regardless of their retirement plan, are protected by the Civil Service laws. 5 M.R.S.A. §671.

QUESTION:

Are state police officers who enlisted prior to January 10, 1943, required to retire at age 70?

ANSWER:

No.

REASONING:

State police officers who enlisted prior to January 10, 1943, are covered by the State Police Retirement System. 25 M.R.S.A. §1591. Section 1591 permits these particular officers to retire after 20 years service. It does not require them to retire at any age. There is no such thing as an inherent or implicit mandatory retirement age for state employees. If there were, the Legislature would not have found it necessary to enact the express mandatory retirement age that binds all state police who enlisted after January 10, 1943. 5 M.R.S.A. §1121 (1).

Because there is no mandatory retirement age for officers who joined the state police prior to January 10, 1943, they can work as long as they can perform their jobs and are subject to dismissal under the Civil Service laws only for "cause". 5 M.R.S.A. 678. The only other thing that would require these men to retire would be new legislation in the form of an amendment to 25 M.R.S.A. §1591.

What motivated the Legislature to make the mandatory retirement age applicable to most state employees but not to pre-1943 state police officers is unclear. But that they made this distinction could not be clearer. When the Legislature set up a mandatory retirement age of 55 for most state police in 5 M.R.S.A. §1121(1), it expressly exempted those officers who joined the force prior to July 10, 1943.

There is no such express exemption in 5 M.R.S.A. §1121(1), which sets a mandatory retirement age of 70 for most other state employees; but the Legislature says clearly that this particular mandatory retirement age applies only to those state "employees" who are "members" of the State Retirement System. As pointed out above the officers in question are members of the State Police Retirement System, not the State Retirement System. Despite the similarity of names, the two retirement systems are separate. The statutory definitions applicable to the State Retirement System state expressly that state police officers who joined the force prior to January 10, 1943 are not to be considered employees for purposes of determining who is covered by the State Retirement System statutes. 5 M.R.S.A. 1001(10). Moreover, 5 M.R.S.A. §1091 states that even if the officers in question were considered employees for retirement purposes, they would not be eligible for membership in the State Retirement System set up by Title 5 if they are also eligible to receive any retirement allowance under any other retirement provisions supported by the state. The officers in question as stated at the beginning of this discussion, are eligible to receive allowances under the retirement provisions of Title 25. Therefore, they could not possibly be members of the State Retirement System and they are not bound by the mandatory retirement age contained in Title 5.

cb

Signature: W. S. BRODRICK