

# MAINE STATE LEGISLATURE

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Applicability of earnings limitation to State College retiree under State Retirement System employed by University of Maine

SYLLABUS:

A former State College employee absorbed into the University of Maine who elected to remain in the State Retirement System until his retirement from such service, and who is subsequently employed by that University, has not been "restored to service" and is not subject to the earnings limitations in Chapter 595, P.L. 1971.

FACTS:

X was a State College employee who, when the University of Maine absorbed that College in 1967, elected to remain in the Maine State Retirement System, while continuing in the University of Maine absorbed position until his retirement from such service. Subsequently, X has been employed by the University of Maine, he is under the Social Security System, and he is not a member of the State Retirement System.

QUESTION:

Is the earnings limitation imposed by Chapter 595, P.L. 1971, applicable to X?

ANSWER:

No.

REASONS:

Chapter 595, P.L. 1971, amended the third sentence of 5 M.R.S.A. § 1123 to read as follows:

"Should any recipient of benefits other than disability benefits be restored to service, and should the combination of his monthly retirement allowance and monthly earnable compensation at any time exceed 1/12 of his average final compensation at retirement, his monthly retirement allowance payments shall be reduced accordingly; if his retirement allowance payments are thereby eliminated,

the beneficiary shall again become a member of the retirement system and he shall contribute thereafter at the current rate and when such member subsequently again retires, he shall receive such combined benefits as may be computed on his entire creditable service and in accordance with the then existing law."

The critical question is whether or not X's present employment with the University of Maine constitutes his being "restored to service" within the meaning of the quoted statute. In this connection, 5 M.R.S.A. § 1001, subsection 23, defines "service" as follows:

"'Service' shall mean service as an employee, as defined in this section, for which compensation was paid."

5 M.R.S.A. § 1001, subsection 10 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, . . ."

This Office has long ago ruled that the University of Maine is a legal entity wholly separate and apart from the State; that it is an instrumentality of the State only for the purpose for which it was established; and that the University is not a "department" within the meaning of that term as used in the predecessor of 5 M.R.S.A. § 1001, subsection 10. See Opinion of the Attorney General, April 30, 1945 and March 23, 1946. This interpretation seems to be implicitly approved by the provisions of Chapter 229, P. & S.L. 1968, recognizing the separate retirement system of the University of Maine.

Therefore, it is clear that X is not an "employee" as that term is defined in the above-quoted subsection 10, and, hence, his present employment with the University of Maine is not "service" as defined in the above-quoted subsection 23. Accordingly, his present employment does not constitute his being "restored to service" as that phrase is used in Chapter 595, P.L. 1971. Therefore, the earnings limitations imposed by Chapter 595, P.L. 1971, are inapplicable to X.

It is true that X was formerly in the service of the State as a result of his employment in the State College. It is also true that his State service continued after the absorption of the State College by the University of Maine, as a result of his authorized election

under Chapter 229, P.L. 1967, to remain under the State Retirement System, rather than transfer to the University of Maine retirement system. However, that service ended upon his retirement. He is not now a member of the State Retirement System, nor is he eligible to be such a member, since the University of Maine has its own retirement system, it is not a "department," and the University has not elected to become a participating local district. Accordingly, in no sense can he be regarded as having been "restored to service" of the State.

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