

MAINE STATE LEGISLATURE

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December 12, 1973

William G. Blodgett, Exec. Dir.

Maine State Retirement System

Charles R. Larouche, Assistant

Attorney General

Eligibility of SAD Directors for Membership in Maine State Retirement System

This replies to your memo of November 28, 1973, concerning the subject.

I understand that you wish to know whether or not a Director of an SAD is thereby an "employee" of the SAD, and, therefore, eligible for membership in the Maine State Retirement System. The answer to that question is negative.

5 M.R.S.A. § 1092, subsection 1, provides:

"The employees of any . . . quasi-municipal corporation . . . may participate in the retirement system . . . provided the . . . trustees of . . . quasi-municipal corporation . . . approve such participation . . ."

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

"'Employee' shall mean any regular classified or unclassified officer or employee in a department . . ."

20 M.R.S.A. § 301 provides that:

"All of the affairs of a School Administrative District shall be managed by a board of school directors . . ."

The directors are elected officials. §§ 301, 302.

Section 302 also provides that:

"The school directors shall determine their compensation, not less than \$5 and not to exceed \$10, for the services for each board meeting that each attends."

20 M.R.S.A. § 309-C provides:

"No director or employee of the School Administrative District shall open such bid until the appointed time. . . . If any citizens who are not School Administrative District directors or employees. . . ."

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An SAD is a quasi-municipal corporation. 20 M.R.S.A. § 215.

It appears to me from the foregoing that the employees of an SAD are eligible for participation in the Maine State Retirement System if the SAD directors approve of such participation. However, it also seems from all of the foregoing that SAD directors are legislatively deemed as strictly "trustees" of the SAD and not as "employees," especially in view of the language in § 309-C which indicates a legislative distinction between a "director" and an "employee" of the SAD.

In answer to the three questions specified in your memo:

"Would the compensation paid to directors of an SAD for attending meetings, as provided for under 20 MRSA Section 302, be considered "per diem" payments?"

Answer: Affirmative. A payment of \$55 or \$10 for each board meeting attended may fairly be regarded as "per diem" payment.

"If the answer to #1 is negative, may the directors of an SAD be included in the membership of the Maine State Retirement System as officials of a participating local district?"

On February 27, 1962, this Office rendered an opinion to your Office on the "Status of Per Diem Employees Under Retirement System." I concur in that opinion. See copy attached.

"If the answer to question #1 is negative and #2 is affirmative, may the Board of Directors vote themselves to membership eligibility, or must their eligibility be approved by the voters of the SAD?"

In view of all of the foregoing answers, this question is deemed to be hypothetical and is not answered at this time.

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CRL:mfe

NOT A FORMAL OPINION