

# 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**

January 18, 1974

William G. Blodgett, Exec. Director

Maine State Retirement System

Charles R. Larouche, Assistant

Attorney General

Retirement Board Mandating Membership by Temporary, non-per-annum,  
non-wholly State paid Employees

This replies to your memo of January 10, 1974, on this subject.

I understand that the Maine State Employees Association has requested the Board of Trustees, Maine State Retirement System, to require all employees, except those who are "elected officials or any class of officials appointed for fixed terms," to be members of the Retirement System. 5 M.R.S.A. § 1091, subsection 1. It appears that 5 M.R.S.A. § 1091, subsection 4 authorizes the Board to "deny the right to become a member to any class of employees whose compensation is only partly paid by the State, with the exception of teachers, or who are serving on a temporary or other than per annum basis."

I understand your question to be whether or not the Board can require membership in the Retirement System by employees who are serving on a temporary or other than per annum basis, or whose compensation is only partly paid by the State, with the exception of teachers. The answer to that question is negative.

5 M.R.S.A. § 1091, subsection 1, provides:

"Any person who shall become an employee shall become a member of the retirement system as a condition of employment and shall not be entitled to receive any retirement allowance under any other retirement provisions supported wholly or in part by the State, anything to the contrary notwithstanding. Membership shall be optional in the case of any class of elected officials or any class of officials appointed for fixed terms."

It is apparent that the first sentence of subsection 1, above-quoted, states a general rule, which declares that any person who becomes an "employee" must become a member of the Retirement System. The second sentence of subsection 1 provides two explicit classes of exceptions, i.e., elected officials, and officials appointed for fixed terms. Persons in these two classes have the option of joining or not, as they may choose. While it might seem that the enunciation of this broad general mandatory rule with such an explicit statement of exceptions would exclude the existence of any other exception, this is not so, for the whole statute must be considered.

Subsection 4 authorizes the Board to deny the right to become members of the System to those employees serving on a temporary or other than per annum basis, and to those whose compensation is only partly paid by the State, with the exception of teachers. This grant of power to the Board to deny to these categories of employees the

NOT A FORMAL OPINION

January 18, 1974

right to join the Retirement System exempts such employees from the general rule which mandates membership. This conclusion seems to follow from the tenor of subsection 4 which seems to allow such employees to remain as "employees" even though the Board has denied them the right to join the System. It would also seem to follow from the fact that if subsection 4 were construed as conferring not only authority to deny but also to compel membership, such grant of authority would confer upon the Retirement Board a power to establish personnel employment rules superior to<sup>the</sup> Personnel Board. However, the express grant of power in such matter to the State Personnel Board precludes any possible implication of a grant of such power in the Board of Trustees, Maine State Retirement System.

---

CHARLES R. LAROCHE  
Assistant Attorney General

CRL:mfe

NOT A PERMANENT OPINION