

MAINE STATE LEGISLATURE

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May 3, 1974

W. G. Blodgett, Executive Director

Maine State Retirement System

Charles R. Larouche, Assistant

Attorney General

Retirement Status of Edward Marks - Commissioner of Public Safety

This replies to your memo of May 2, 1974, concerning the subject.

I understand your first question to be:

Whether or not Major Marks could be "retired" from the State Police, under 25 M.R.S.A. § 1591, and be immediately appointed Commissioner of Public Safety, and simultaneously draw the retirement pay and the pay of the Commissioner?

The answer to that question is negative.

The word "retire" as used in the State Police Retirement System statute (25 M.R.S.A. § 1591) means to withdraw from his occupation in the State service as a member of the Department of Public Safety. It is apparent from the first stated question that Major Marks would not be withdrawing from his occupation in the State service as a member of the Department of Public Safety, but would be changing positions within that Department. Hence, he would not be entitled to receive a retirement allowance.

I understand your second question to be:

Assuming that Major Marks had actually been retired as a State Police Officer, with the benefits provided under 25 M.R.S.A. § 1591, and he were subsequently appointed Commissioner of Public Safety, could he then join the Maine State Retirement System, and thereafter retire with the benefits provided under Chapter 101 of Title 5?

The answer to that question is negative.

5 M.R.S.A. § 1001, subsection 10, expressly provides that the term "employee" as used in Chapter 101, Title 5 "shall not include . . . nor shall it include any member of the State Police who is now entitled to retirement benefits under Title 25, Chapter 195." Accordingly, since he is not an "employee" as that term is used in Chapter 101, Title 5, he could not become a member of the State Retirement System. See 5 M.R.S.A. § 1091, subsection 1.

AN INFORMAL OPINION

May 3, 1974

Your third question reads:

Do you feel that under the provisions of 25 M.R.S.A., Section 1591, that Major Marks would be required to retire July 1, 1974 regardless of whether or not he was appointed Commissioner of Public Safety?

The answer to that question is "No, he would not be required to retire if he were appointed Commissioner of Public Safety, but he would have to retire then if he were not so appointed."

The first paragraph of 25 M.R.S.A. § 1591 provides:

"Any member of the State Police may retire upon completion of 20 years creditable service, but must retire no later than July 1, 1974 and be placed upon the pension rolls and receive thereafter 1/2 of the pay per year that is paid to a member of his grade at the time of his retirement. This section shall apply only to persons who were members of the State Police on July 9, 1943, except that a member appointed as chief or as Commissioner of Public Safety shall be permitted to continue in said position beyond July 1, 1974 or after completion of 20 years of creditable service until the end of the term for which he was appointed and said chief or commissioner may be appointed or reappointed regardless of attained age or length of creditable service."

It seems clear that this provision requires the retirement of Major Marks unless he is appointed as Chief or Commissioner of Public Safety before that time.

CHARLES R. LAROCHE
Assistant Attorney General

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AN INFORMAL OPINION