

MAINE STATE LEGISLATURE

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August 27, 1974

Nicholas L. Caraganis, Director

Personnel

Phillip M. Kilmister, Assistant

Attorney General

5 M.R.S.A. § 555

Your recent memorandum of June 21, 1974 submitted to this office, in essence, presents only one question, based upon an actual factual situation for our review. Your other inquiries, justifiably concerned with the nebulous language of the second paragraph of 5 M.R.S.A. § 631, do not, however, lend themselves to an answer, unless mirrored against specific factual situations.

As to the former school teacher at Brunswick High School, who, having completed 4 years of active military duty, seeks re-employment at said school, the answer is clear that he has no right, created by statute, to re-employment in his former position. At the time that the school teacher entered military service in 1970, he had been employed for only one year and had not attained "permanent status" in his employment, a prerequisite expressly required by the language of 5 M.R.S.A. § 555 at that time in order to enable a person leaving state-related service and entering military service, to attain status as an employee "on leave of absence." The subsequent amendment of 5 M.R.S.A. § 555 in 1972 which eliminated the need for obtaining "permanent status" in order to insure veterans of military service of the opportunity for re-employment in state service, is of no avail to the school teacher in the instant case. At the time he entered military service in 1970 he did not qualify, by existing law, as an employee on leave of absence, and he had, in fact, abandoned his employment.

Although civil service statutes should be liberally construed to benefit all those employes within their ambit, it is in no way possible to equate the status of an employee who has left state service and an employee who remains in state service "on leave of absence."

The second paragraph of 5 M.R.S.A. § 631 reads as follows:

"The director shall have the power and duty to administer and make effective chapters 51 to 61 and the rules and regulations of the board."

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Please be advised that this broad statutory language does not obligate you, and may not even allow you to administrate provisions in every statute referred to in said section. For instance, Chapter 59 of the Personnel Law, refers specifically to the Unclassified Service, where obviously your authority is extremely limited. Also, as to employees of school administrative districts, as an example of employees referred to in section 555 of Title 5, mentioned in your memorandum, your authority to determine terms of employment would be very limited compared to the authority vested in a Superintendent or School Board.

Unfortunately, I cannot offer you any guidelines interpreting your authority under 5 M.R.S.A. § 631. As noted above, questions as to your authority must be resolved on an individual case by case basis.


PHILLIP M. KILMISTER
Assistant Attorney General

PMK/jwp