

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date September 18, 1974

to Kenneth M. Curtis, Governor

Dept. Executive Department

From Jon A. Lund, Attorney General

Dept. Attorney General

Subject Applicability of Ch. 9-B, Title 26, State Employees Labor Relations Act, to certain State employees

This replies to your memorandum dated August 22, 1974, concerning this subject.

I understand your first question to be:

1. Whether or not the employees of the following departments are persons "performing services within the Executive Department" within the meaning of that phrase as used in 26 M.R.S.A. § 979-A, sub-section 6:

- A. State Auditor
- B. Secretary of State
- C. State Treasurer
- D. Attorney General
- E. State Law Librarian

The answer to that question is affirmative as to A through D and negative as to E. Section 1, Article III, Constitution of Maine divides the powers of government into "three distinct departments, the Legislative, Executive and Judicial." The term "Executive Department" as used in 26 M.R.S.A. § 979-A, sub-section 6, appears to be as used in Section 1, Article III, Constitution of Maine. The State Auditor, Secretary of State and State Treasurer are administrative officers within the Executive Department. 81 CJS, States, §§ 63-65. The Attorney General is the chief law officer of the State and is a part of the Executive Department. 7 CJS, Attorney General, § 5.

The State Law Librarian is the Director of the Law and Legislative Reference Library (3 M.R.S.A. § 172), is appointed by the Legislative Council (3 M.R.S.A. § 162, sub-section 6, and § 172), provides a Legislative Reference Service (3 M.R.S.A. § 173, sub-section 1) and is coordinated by the Legislative Administrative Director (3 M.R.S.A. § 163, sub-section 2) who is the executive officer of the Legislature when it is not in session (3 M.R.S.A. § 163, sub-section 1). Accordingly, the State Law Librarian appears to be in the Legislative Department. See Dunbar v. Cronin, 164 Pac. 447.

I understand your second question to be whether or not the following State officials are excepted expressly or by clear implication from the meaning of the term "State employee" as that term is used in 26 M.R.S.A. § 979-A, sub-section 6:

- A. State Auditor
- B. Secretary of State
- C. State Treasurer
- D. Attorney General

The answer to that question is affirmative as to all of these officials.

While none of these officials is expressly excepted from the meaning of the term "State employee" as it is used in 26 M.R.S.A. § 979-A, sub-section 6, each of them is excepted therefrom by clear implication. Sub-section 6 provides, in pertinent part:

"6. State employee. 'State employee' means any employee of the State of Maine performing service within the Executive Department except any person:

B. Appointed to office pursuant to statute, ordinance or resolution for a specified term by the Governor or by a department head or body having appointive power within the Executive Department;"

Each of the above-named officials is a department head having appointive powers. Since the Legislature has expressly excepted department head appointees from the meaning of the term "State employee" as used in that section, it seems obvious that the Legislature must also have intended to except therefrom the department heads.

Your third question reads:

Does sub-section 6-G of Section 979-A of Title 26 exclude from the definition of State employees eligible to belong to a collective bargaining unit all State employees who are members of the National Guard?

The answer to that question is negative. 26 M.R.S.A. § 979-A, sub-section 6, provides, in pertinent part;

"6. State employee. 'State employee' means any employees of the State of Maine performing services within the Executive Department except any person:

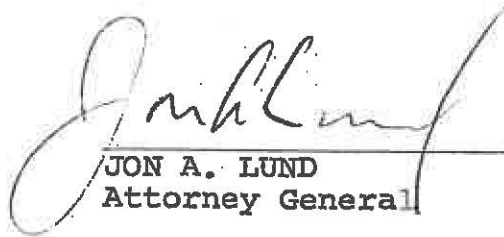
G. Who is serving as a member of the State Militia or National Guard."

It does not appear to be the intent of the Legislature to exclude from the benefits of the State Employees Labor Relations Act those persons who would otherwise be a "State employee" within the meaning of that term as used in 26 M.R.S.A. § 979-A, sub-section 6, merely because he also serves the State as a member of the State Militia or National

Guard; none of such service constitutes one a "state employee" within the meaning of that term as used in this particular statute, but such service does not bar one from otherwise being a "state employee" within the meaning of this statute, i.e., by reason of some other service within the executive department.

I believe that the foregoing answers all of the questions you have presented in your memorandum of August 22, 1974.

If I can be of any further aid to you, please advise me.



JON A. LUND
Attorney General

JAL/bls