

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date January 2, 1975

To W. G. Blodgett, Executive Director

Dept. Maine State Retirement System

From Charles R. Larouche, Assistant

Dept. Attorney General

Subject Amount of Creditable Service For Part-Time Employees of the Legislature

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This replies to your memo of December 16, 1974, concerning this subject.

It appears that there are some persons who are employed by the Legislature on a part-time basis and who are accordingly compensated on other than a per annum basis. Such persons include Clerks of the legislative committees. I understand your question to be whether or not such persons are entitled to a full year of service regardless of the amount of time they may actually be employed by the Legislature in any one year, provided they have been employed during the full period that the Legislature was in session. The answer to that question is negative.

5 M.R.S.A. § 1094, subsection 4 provides:

"The board of trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service, but in no case shall it allow credit for a period of absence without pay of more than a month's duration if a full-time position, nor shall more than one year of service be creditable for all service in one calendar year. Service rendered for the full normal working time in any year shall be equivalent to one year's service. For the purpose of determining prior service credits, actual time worked in any year shall be deemed to be the normal working time. For evening school credits, any teacher who teaches a full accredited year in any evening school duly accepted and approved by the Commissioner of Educational and Cultural Services shall be allowed not more than 1/2 a year's credit toward retirement for each school year so taught. Any period of time during which an evening school teacher teaches less than a full so-called accredited year shall be allowed toward retirement on a pro rata basis only."

5 M.R.S.A. § 1091, subsection 4, provides:

"The board of trustees may, in its discretion, 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."

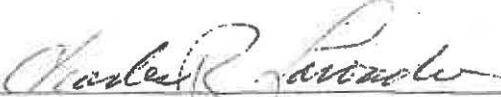
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The Legislature has conferred upon the Board of Trustees the discretionary power to exclude as a class persons who are serving on other than a per annum basis from becoming members of the system. Committee Clerks appear to be in that class. See Opinion of the Attorney General to Secretary of Retirement System, dated July 15, 1942.

The Legislature has conferred upon the Board of Trustees the duty to "fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service . . . ." It appears from the various documents attached to your memorandum of December 16, 1974, that the Board of Trustees has determined long ago that Committee Clerks are temporary, non-per annum employees, and that such employees should only be credited with the time actually worked, plus 30 days, in any one year. See Minutes of Board Meeting of August 7, 1953, and of November 13, 1953. Also see Opinions of the Attorney General to Secretary of Retirement System, dated February 27, 1962 and May 1, 1972, and Report of Attorney General, 1941-1942, at page 129. That long-standing, contemporaneous, administrative construction of this statute is entitled to great weight.

It appears to us that the Board's determination of this matter is consistent with the legislative intent as expressed in this statute. The Legislature views part-time and non-per annum employees in a different manner than full-time, per annum employees. See 5 M.R.S.A. § 1091, subsection 4, and 5 M.R.S.A. § 1094, subsection 4. Furthermore, it has expressly decreed that evening school teachers are only to get 1/2 a year's credit, with a pro rata reduction if they teach less than the full-year.

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

  
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CHARLES R. LAROCHE  
Assistant Attorney General

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