

# MAINE STATE LEGISLATURE

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March 5, 1976

William G. Blodgett, Executive Director

Maine State Retirement System

Donald G. Alexander, Assistant

Attorney General

Propriety of Board of Trustees, Ruling Regarding Substitute Teachers

Your memorandum of February 17, 1976, requested advice as to the appropriateness of a board regulation that substitute teachers would not be required to make retirement contributions until they have taught for at least a total of 30 days in any one school year. The regulation appears appropriate under the law.

The problem addressed arises from the requirements stated in 5 M.R.S.A. § 1091-1 that any persons who are employees, with certain stated exceptions, be members of the Retirement System. A similar requirement is imposed for participating local districts under 5 M.R.S.A. § 1092-5. These provisions, on their face, would appear to require that all employees be members of the Retirement System. However, the Board does have some flexibility in determining who are employees to participate in the System. Thus, 5 M.R.S.A. § 1001-10 defines employee as "any regular classified or unclassified officer or employee in a department, including, for the purposes of this chapter, teachers in public schools . . . ." By adding the adjective "regular" in front of "classified," the statute by implication contemplates that persons who are not full-time employees might be excluded from coverage. See also 5 M.R.S.A. § 1091-4. Further, the definition of employee, § 1001-10, last sentence, grants the Board of Trustees authority, in cases of doubt, to determine which persons are employees for the purposes of the retirement law. This the Board has done by their ruling of December 5, 1947, that retirement contributions need not be taken for substitute teachers having less than 30 days annual service. Such is a reasonable interpretation of the "regular" employee requirement and, as it was applied in the case about which you requested information, it was perfectly legal. For further discussion of related issue, you may wish to refer to the opinion of this office dated January 18, 1974, discussing mandated membership of temporary employees.

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DONALD G. ALEXANDER  
Assistant Attorney General

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