

MAINE STATE LEGISLATURE

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5 MRSA § 1122-4
STATE OF MAINE

Inter-Departmental Memorandum Date August 27, 1976

To William G. Blodgett, Exec. Dir. Dept. Maine State Retirement System
From Donald G. Alexander, Deputy Dept. Attorney General
Subject Disability Status under 5 M.R.S.A., Section 1122-4 of Officer in the
Maine State Grange

This responds to your memorandum of August 6, 1976, in the above captioned matter. In the memorandum you pose the question:

Do you feel that an elective position in the Maine State Grange would come under the earnings restrictions indicated in the above referred to statute for one engaged in gainful occupation."

Reviewing 5 M.R.S.A. § 1122-4, it is the view of this office that the manner by which a position is acquired, be it election, appointment, hiring through competitive exam or whatever, is not relevant to the limitations specified in sub-§ 4. Rather, the question is whether the position for which compensation is being provided amounts to engaging in a gainful occupation. Whether any particular position is engaging in a gainful occupation or not would appear to be a policy and factual matter for determination by the Board of the Maine State Retirement System. All activities which result in income to a person do not necessarily constitute engaging in a gainful occupation. Thus, certain positions to which a person may be elected may carry some stipend but be purely honorary in nature. Other positions to which a person may be elected, hired, or whatever, require a certain amount of work such as would constitute engaging in a gainful occupation. The nature of each position in question must thus be evaluated according to the facts to make a proper determination.

DONALD G. ALEXANDER
Deputy Attorney General

DGA:jg