

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

Attorney General's Part Time Employment  
5 M.R.S.A. 1094-4

STATE OF MAINE

Inter-Departmental Memorandum Date June 10, 1977

W. G. Blodgett, Exec. Director

Dept. Maine State Retirement System

From Kay R. H. Evans, Assistant

Dept. Attorney General

Subject Proposed Regulations regarding Membership and Creditable Service

Your memo of May 16, 1977, asks whether a proposed regulation regarding creditable service conflicts with a certain provision of the retirement law. We conclude that the proposed regulation conflicts with a long-standing administrative interpretation of the relevant statutory language. While the trustees and administrators of the Retirement System are not forever bound by a previous interpretation of statutory language, any change must be to a fair and reasonable interpretation supported by the statutory language and should provide persons whose rights will be affected by the change with an opportunity to be heard thereon.

OPINION:

By a bulletin dated March 25, 1977, the trustees propose to grant to permanent part-time employees of the State 1.6 days of credit for each day worked. The question has arisen whether the proposed regulation conflicts with the language of 5 M.R.S.A. § 1094, sub-§ 4, which provides:

Service rendered for the full normal working time in any year shall be equivalent to 1 year's service.

No statutory definition or legislative history offers any help in deciphering the meaning of "full normal working time." The statutory language itself supports more than one interpretation. "Full normal working time" could refer to the normal full-time 40-hour work week. Under that reading, the sentence in question would mean that whether a year's worth of work (40 hours per week times the number of work weeks in a year) was performed in a year or less than a year, one year's credit would be given. This reading is supported by the fact that the previous sentence says that more than one year's work in one year can earn no more than one year of credit. The two sentences encompass corrolary situations. Under this reading, part-time permanent work would not equal "full normal working time,"<sup>1/</sup> and the trustees would be free of that limitation in fixing the amount of creditable service to be granted.

1/ Neither, of course, would seasonal work, or for that matter any work other than full-time.

The other interpretation of the language is the one which has been followed to date by the administrators and trustees of the Retirement System. Under that interpretation, "full normal working time" has meant the time required to be worked in a given position. Under this interpretation, for example, full normal working time for a seasonal position has been the season for which the position exists. For part-time permanent positions, full normal working time has meant the amount of time required for a given position. This interpretation of the sentence in question has meant that, to date, part-time permanent employees have received a full year's service credit for each year in which they have worked the number of hours requires for their position.

The proposed regulation reflects a change to the interpretation first discussed above. The trustees may make such a change, providing that the new interpretation is supported by the statutory language, implements that language and the Legislature's intent, and results in a reasonable, fair, consistent and non-discriminatory regulation. As indicated, it is our opinion that the new interpretation is supported by and implements the statutory language and is a reasonable reading thereof. To be fair, consistent and non-discriminatory, however, a regulation reflecting the new interpretation must give similar treatment to similarly situated employees. The proposed regulation treats differently seasonal and part-time permanent employees, in at least some of whose positions there appears to be substantial similarities. Thus the regulation does not appear to give the required similar treatment to similarly situated employees.

We note that in structuring regulations the trustees are not bound to draw Retirement System distinctions to coincide with Personnel classification lines. The trustees may draw distinctions for Retirement System purposes within job classifications as well as between them - again, so long as such distinctions are reasonable, fair, consistent and non-discriminatory. Indeed, if similar positions are to be treated similarly for Retirement System purposes, such distinctions may have to be drawn. For example, some part-time permanent positions may be more like seasonal positions, with respect to the amount of time required to be worked. Other part-time permanent positions, in which the required working time is less, may be treated differently. For example, assuming the minimum seasonal time is 3 months' work in one year, for which the seasonal employee is granted one year of service credit, part-time permanent employees might be required to work a minimum of three months in a year in order to obtain a year's credit. Part-time permanent work for less than 3 months in a year (or its equivalent in hours) could be credited at the 1/6 rate.

W. G. Blodgett

Page 3

June 10, 1977

Finally, where a new interpretation of statutory language would change a long-standing administrative practice, with substantial effect on individuals' rights or benefits, due process issues may arise. The trustees would be wise, if not absolutely required, to surround such a change with more due process protection than have accompanied the development of the regulation to date. Such protections might include, at a minimum, notice of the proposed change to affected employees, with an explanation and a statement of reasons and an invitation to comment.

*Kay R. H. Evans*

KAY R. H. EVANS

Assistant Attorney General

KRHE/ec