

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)

Retirement Local District Status
5 M.R.S.A. 1001 (11-A)

JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

February 13, 1978

To: W. G. Blodgett, Executive Director, Maine State Retirement System

From: Kay R. H. Evans, Assistant Attorney General

Re: Status of Rumford-Mexico Sewerage District under Maine State Retirement System

Your memo of January 26, 1978, notes that included in the Maine State Retirement System membership as employees of the Town of Rumford, which is a participating local district, are "employees who work for the Rumford-Mexico Sewerage District." Taking your questions in reverse order, you have asked whether such participation is proper and suggest the alternative of participation by the establishment of a separate local district comprised of the Sewerage District itself. You have also asked whether the Sewerage District would qualify as a local district under 5 M.R.S.A. § 1001(11-A).

Under certain circumstances, discussed below, participation by these employees in the Maine State Retirement System as employees of the Town of Rumford would be proper. If those circumstances presently exist or can be created, the employees may continue to participate as employees of Rumford. Alternatively, the Sewerage District qualifies and could be established as a separate local district; if the appropriate circumstances do not exist for these employees to participate as Rumford employees, they can participate only as employees of a Sewerage District-local district.

OPINION:

Your first question is whether "employees who work for the Rumford-Mexico Sewerage District" may participate in the Retirement System as employees of the Town of Rumford, which is a participating local district.

5 M.R.S.A. § 1092(1) states,

The employees of any local district may participate in the retirement system. . . .

Section 1092(5) deals with certain aspects of membership and refers to "employees in the service of a participating local district." The documentation supplied with your memo does not provide details of any employment relationship, whether between these employees and the Town of Rumford or between these employees and the Rumford-Mexico Sewerage District. If those details were known, a definitive answer to this question would probably be possible. In their absence, however, it is possible to define two sets of circumstances in which participation of these employees as employees of the Town of Rumford would be proper. You can then determine whether either set of circumstances presently obtains.

The first such circumstances would be if these employees are in fact employees of the Town of Rumford, hired and assigned by Rumford to perform Sewerage District work.

Examination of P. & S.L. 1971, c. 79, by which the Rumford-Mexico Sewerage District was created, suggests the possibility of a second set of circumstances constituting an employment relationship between the Town of Rumford and these employees. From Chapter 79, it clearly appears that the Sewerage District has the authority to hire and direct its own employees. However, the law provides, in § 17, for apportionment of Sewerage District costs between the Town of Rumford and the Mexico Sewer District. While §§ 17 and 18 specify which costs are to be apportioned and on what basis, Chapter 79 nowhere provides for the manner or form in which such costs are to be paid. Conceivably Rumford, as part payment of its apportioned costs, carries these workers as its employees. If such is the case, the participation of these employees in the Retirement System as Rumford employees would be proper.

The existence of an employment relationship between these employees and the local district-town must be established. Such a relationship could seem to be a matter of little import, so long as Rumford is willing to pay the employer's share of these employees' membership. However, an undesirable precedent is thereby established of permitting a local district to, in effect, identify whomever it will as an employee for purposes of retirement. Moreover, the existence of an actual employment relationship would appear to be mandated by the § 1092 references to "employees of" and "in the service of" a local district. While that relationship may take diverse forms, its existence must be established and to the satisfaction of the Retirement System.

Your second question is whether the Rumford-Mexico Sewerage District qualifies as a local district under 5 M.R.S.A. § 1001(11-A).

The Sewerage District was created by P. & S.L. 1971, c. 79, as a body politic and corporate, with authority and responsibility for performing certain functions which could be performed by the State and/or by the political subdivision of the State. Thus, the Sewerage District constitutes "an incorporated instrumentality of the State or of one or more of its political subdivisions,"^{1/} as provided in § 1001(11-A) and would thus be eligible to participate as a local district in the Retirement System.



KAY R. H. EVANS
Assistant Attorney General

KRHE/ec

^{1/} It makes no difference whether the Sewerage District is seen as an instrumentality of the State or of a political subdivision(s).