

MAINE STATE LEGISLATURE

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Retirement Plan for Maine Development Foundation Employees
STATE OF MAINE *5 M.R.S.A. 1001 -11-A*
5 M.R.S.A. 1092

Maine Development Foundation
Inter-Departmental Memorandum Date March 16, 1978

To W. G. Blodgett, Exec. Director

Dept. Maine State Retirement System

From Kay R. H. Evans, Assistant

Dept. Attorney General

Subject Eligibility of Maine Development Foundation to Participate in MSRS

By memo of March 3, 1978, you requested an opinion on the availability of membership in the Maine State Retirement System to employees of the Maine Development Foundation. Specifically, you asked whether such workers could participate as State employees, and, if not, if the Foundation would be eligible to participate as a local district, through which its employees could become members. Your request was accompanied by a copy of P.L. 1977, c. 548, enacted as 10 M.R.S.A. §§ 915-928, by which the Maine Development Foundation was created.

Review of 10 M.R.S.A. § 915, et seq. indicates that Foundation employees are not State employees. The Foundation is clearly not a department within the State's administrative system, see, e.g., § 921. Hence, its employees do not fit the definition for eligibility for Retirement System membership as State employees, 5 M.R.S.A. § 1001(10).

The Foundation is eligible to participate in the Retirement System as a local district. Under 5 M.R.S.A. § 1001(11-A), "local district" includes, among other entities, an incorporated instrumentality of the State. Section 916 of Title 10 establishes the Foundation as a "not-for-profit corporation with a public purpose," the work of which is deemed to be an essential governmental function. The Foundation is charged with particular activities, § 917, and exercises particular powers, § 920, which the State might itself perform and exercise. State officers are ex officio corporators, § 918, and serve by gubernatorial appointment on the Board of Directors, § 919. The Foundation reports annually to the Governor and the Legislature, § 925, and, on dissolution, its assets revert to the State, § 926.

On the basis of these provisions, the Maine Development Foundation constitutes an incorporated instrumentality of the State and is eligible to participate in the Retirement System as a local district under 5 M.R.S.A. §§ 1001(11-A) and § 1092.

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Assistant Attorney General

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