

# MAINE STATE LEGISLATURE

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Retirement, Dept. of (X) (1091-1)  
5 M.R.S.A. 1091-1  
STATE OF MAINE

Inter-Departmental Memorandum Date July 27, 1978

To P. R. Gingrow, Asst. Exec. Dir.

Dept. Maine State Retirement System

From Kay R. H. Evans, Assistant

Dept. Attorney General

Subject Membership of Deputy Sheriffs in the Maine State Retirement System

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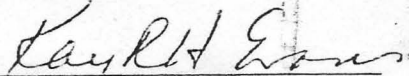
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Your memo of June 1, 1978, asks whether membership in the Maine State Retirement System for Deputy Sheriffs, appointed under the provisions of 30 M.R.S.A. § 951, is to be considered mandatory or optional.

Section 951 provides in relevant part:

Deputies shall be originally appointed for a probationary period of not more than 6 months and thereafter may be appointed or reappointed for a term of 3 years. The sheriff may dismiss, suspend or otherwise discipline a deputy during the term of his appointment only for cause.

Appointment for a fixed term and dismissal for cause during the term are not mutually exclusive conditions of employment. That an employee may be dismissed during her/his fixed term of service only for cause does not change the nature of the appointment to other than a fixed term. Even if reappointment could be refused only for cause, which does not appear to be the case here,<sup>1/</sup> the appointment or reappointment is nonetheless for a period of time with specified limits and is therefore, at least for retirement system purposes, a fixed term. Therefore under the provisions of 5 M.R.S.A. § 1091(1), membership of deputy sheriffs in the Retirement System is optional.

  
KAY R. H. EVANS  
Assistant Attorney General

KRHE:jg

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1/ Your memo suggests that a deputy may be refused re-appointment only for cause. However, the statutory provision applies in terms only to dismissal during a term of appointment.