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Unemployment - Unemployed Individual 1978
26 M.R.S.A. § 1043(17)(A)

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July 28, 1978

To: Seth W. Thornton, Temporary Deputy
Commissioner, Manpower Affairs

From: Allan A. Toubman, Asst. Atty. General
Department of Attorney General

Subject: Definition of Unemployed Individual,
26 M.R.S.A. § 1043(17)(A)

You have requested an opinion regarding whether a claimant for unemployment benefits is eligible if he receives payment for past services during the period he is seeking benefits.

This opinion may be summarized as follows:

A claimant who receives the remainder of his salary due under a contract in the form of installments during a period when he had no obligation to perform services is not eligible during that period. A claimant who receives a lump sum payment due under a contract and who has no obligation to perform future services under that contract is eligible for benefits in the weeks following receipt of that lump sum payment.

For the purpose of this opinion, it is assumed the claimant is a teacher working under a contract that specifies the number of school days per year that he must teach at a fixed yearly salary. It is also assumed that at the time the claimant completed his school year he had not been paid his full salary. There are two possibilities under which the claimant could receive the remainder. Either he could be paid in weekly installments, or he could be paid in a lump sum. Either one of these situations could arise when a teacher completes his teaching year in the summer.

Under these facts, two issues are presented:

- (1) Whether a claimant who receives the remainder of his salary in the form of installment payments during a period when he had no obligation to perform future services is an unemployed individual within the meaning of 26 § 1043(17)(A).
- (2) Whether a claimant who received a lump sum payment due under a contract and who has no obligation to perform future services, is an unemployed individual, within the meaning of 26 M.R.S.A. § 1043(17)(A).

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To be eligible for unemployment benefits, it is necessary that a claimant be an "unemployed individual." 26 M.R.S.A. § 1192.

Title 26 M.R.S.A. § 1043 (17) (A) provides, in part:

"Unemployment means an individual ... shall be deemed totally unemployed in any week with respect to which [1] no wages are payable to him and [2] during which he performs no services."

From the facts assumed, there is no question that the claimant would perform no services after the end of the school year. He had satisfied the number of teaching days requirement of his contract. The only question is whether there were any wages payable to him with respect to those weeks he claimed benefits.

The installment payment problem was addressed in Conroy v. MESC CA-76-96 (Sup. Ct. Me. January 27, 1978). In that case, a part-time teacher at the University of Maine at Orono held a teaching contract which ran from September 30, 1974, to June 30, 1975. The school year ended on May 17, 1975, and the plaintiff performed no services for the employer after that date. The employment contract provided that the plaintiff would be paid in ten monthly installments beginning September 30, 1974, and ending on June 30, 1975. The plaintiff applied for unemployment compensation on June 12, 1975, even though he was to receive his final salary installment on June 30, 1975. The plaintiff was denied benefits for the month of June by the Employment Security Commission, and the Court upheld that determination.

The Court in Conroy cites with approval a similar Oregon case, Hanna v. Employment Division, 550 P.2d 758 (Ore. 1976). In Hanna, the claimant teacher was employed under a contract which provided that his salary would be payable in twelve monthly installments although he worked for only nine months. Upon receiving notice that he would not be rehired for the following year, the claimant applied for unemployment benefits. Under a statute virtually identical to Maine's, the Court held that the claimant had wages payable to him in the weeks following the end of the academic year.

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The rationale of both Conroy and Hanna appears to be based upon the contractual agreement between employee and employer.¹ See also Hawaii State Teachers Ass'n v. Dep't of Labor Relations, 546 P.2d 1 (Hawaii, (1976)). In both cases, the contract provided that payment for nine months of services would be prorated over a 12-month period. Thus, even though the teacher performed no services during the weeks in question, because of the receipt of wages due under his contract, he would not be an unemployed individual within the meaning of § 1043 (17) (A).

The case of a teacher without a contract for the next year who receives a lump sum payment at the close of the academic year presents an entirely different situation. In such circumstances, there are no wages actually paid in the weeks following the termination of services and the payment of the lump sum.² Unlike the situation in Conroy and Hanna, the employer has discharged his/her contractual duty to pay wages. In Hawaii State Teachers v. Dept. of Labor, the court held that teachers without a contract for the following year who received installment payments throughout the summer were not "unemployed individuals" because they received wages payable to them throughout the summer. However, the court noted:

Had the claimants chosen to resign rather than retain their contract status, the lump sum payments received on resignation would not have been paid with respect to subsequent weeks ... (emphasis supplied). 546 P.2d at 5, n. 4.

Since a claimant receives no wages during the period he claims benefits, "no wages are payable to him." Disqualification of the teacher will occur in the week of receipt of the lump sum payment. The payment will be attributed to the week of actual receipt.

1 In McClintock v. Nemaha Valley Schools, 253 N.W.2d 304 (Neb. 1977), a school teacher whose contract had not been renewed for the coming school year received the balance of his salary at the end of the term. The teacher was denied unemployment benefits for the summer on the grounds that he received wages with respect to the weeks he claimed benefits. The District Court of Nebraska reversed and allowed benefits. Upon review, the Supreme Court stated that a determination of the issue requires a construction of the contract. Because the contract was not in the record and because the Commissioner failed to file a motion for a new trial, the court refused to review the merits of the case.

2 If employees who are paid a lump sum at the close of the school year are covered under a health insurance plan beyond the date of receipt of the lump sum, the payment by the employer of

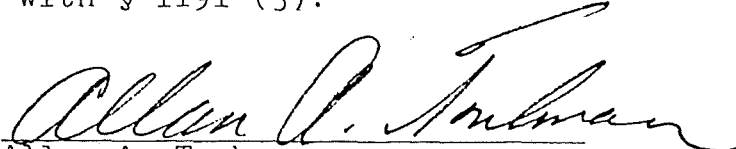
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A similar conclusion has been reached by an Attorney General's opinion dated March 30, 1978, which involved disqualification for receipt of severance pay. That opinion concluded that although receipt of severance pay disqualified a claimant under § 1193 (15) (A), such disqualification only occurs during the week of actual receipt of such severance pay. An employee who receives installment severance payments will be disqualified upon receipt of each installment while the employee who receives a lump sum severance payment will be disqualified only during the week of receipt of the lump sum.

Similarly, in this case, a claimant receiving summer installment payments is disqualified throughout the summer. The claimant who has no obligation to perform future services and receives a lump sum payment is disqualified only in the week of receipt.

(Footnote (2) continued)

the insurance premium constitutes a "wage" within the meaning of § 1043 (19). The claimant is then not "totally unemployed" under § 1043 (17) (A), but is "partially unemployed" under § 1043 (17) (B). Under § 1043 (19), the reasonable cash value of remuneration in any form other than money is to be determined in accordance with regulations. Unless the value of the insurance premiums is in excess of \$10 per week, the claimant will be eligible for full weekly benefits. See § 1193 (3). If the value of the insurance premium is greater than \$10 per week, a reduction in weekly benefits must be made in accordance with § 1191 (3).


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cc: Commission Representatives
Pendleton, Cote and Karlen