

MAINE STATE LEGISLATURE

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79-98

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

May 17, 1979

W. G. Blodgett
Executive Director
Maine State Retirement System
State Office Building
Augusta, Maine 04333

Re: Bingham Water District.

Dear Mr. Blodgett:

Your memo of March 21, 1979, raises the question of the legality of the action by which the Bingham Water District became a participating local district in the Maine State Retirement System. From background material submitted with your request, it appears that the Bingham Water District's participation was initiated by a vote of its Board of Trustees taken at a meeting of the Board on December 14, 1971. You have asked: Should the action to participate have had the approval of the voters of the town, or were the trustees legally authorized to take the action they did?

The Bingham Water District was organized under P. & S. L. 1911, c. 13. In 1971, the then-trustees voted to join the Retirement System as a participating district. The statutory section which provided the procedure by which local districts could initiate participation was then, as now, 5 M.R.S.A. § 1092(1). At that time, § 1092(1) provided:

"1. Participating local districts. The employees^{1/} of any . . . town, water district . . . may participate in the retirement system, to the full extent of any and all

^{1/} "Employees" has long been interpreted administratively to include elected officials such as trustees, directors, selectpersons, etc. See 5 M.R.S.A. § 1091(1).

benefits provided for in this chapter provided. . . the voters of a town at a duly constituted town meeting, or the trustees of a water district. . . approve such participation and file with the board of trustees a duly certified copy of the resolution of . . . such corresponding body (i.e., the trustees) approving such participation and the extent of the benefits, which shall apply, or a record of the vote of the town voters. . . ."

It is clear that § 1092(1), as then written, provided one procedure for water districts seeking to participate in the Retirement System (by vote of trustees) and another procedure for towns (by vote of the town voters). Here, the entity seeking to participate was denominated "water district." It is clear from the Act by which it was established (P. & S.L. 1911, c. 13) that the District is not a town, nor is it coterminous, geographically or politically,^{2/} with the Town of Bingham, so that it could be said to be in fact the town, though in name and for certain limited purposes a water district.^{3/} From this, it is apparent that the proper procedure - approval by vote of trustees - was followed, so that the district's participation was properly instituted under the retirement law as then written.^{4/}

2/ The general description given in § 1 of c. 13 is, ". . . so much of the town of Bingham. . . ." More specifically, § 1 defines the Water District as consisting of certain described territory "and the people within the same." Section 11 of c. 13 conditions the operative effect of the Act on acceptance by a majority of the legal voters of the town "within said water district." Other references to voters in the Act are to voters within the District. See, e.g., § 6. A 1957 amendment permitting the water district to extend its pipelines into "so much of the town of Bingham as lies outside the aforesaid territorial limits of said district" does not alter this conclusion. P. & S.L. 1957, c. 45, § 1. (Chapter 13 has been amended on two other occasions in ways not here relevant. P. & S.L. 1913, c. 103; P. & S.L. 1935, c. 62).

3/ Even if the District were a water district superimposed on a town, it would appear that since participation was sought as a water district and since the statute specifically provides a procedure for water districts, the procedure followed would have been proper.

4/ By an Attorney General's opinion of September 9, 1971 (copy attached), the Retirement System was advised, in response to its inquiry, that the Bingham Water District was eligible to participate in the Retirement System as a local district. That opinion was based on the District's having complied with the relevant statute then in force, § 1092(1).

If there is a question whether the action of the trustees was authorized under c. 13, it would properly be addressed to the water district's counsel by the parties concerned.

Very truly yours,

Kay R. H. Evans

KAY R. H. EVANS
Assistant Attorney General

KRHE/ec
Enclosure

September 9, 1971

E. L. Walter, Executive Secretary

Maine State Retirement System

Charles R. Larouche, Assistant
Retirement System: Eligibility
of Bingham Water District

Attorney General

This replies to your August 31, 1971, memorandum request on this subject.

It appears that you have been informed by the Bingham Water District that such District was created by an Act of the Legislature dated February 14, 1911, and that such District is interested in becoming a member of the Maine State Retirement System.

I understand your question to be whether or not such a District is eligible to join the Maine State Retirement System.

The answer to that question is "yes."

Chapter 13 of the Private and Special Laws of 1911, approved February 15, 1911, created the Bingham Water District. On July 15, 1911, a certificate was filed in the Office of the Secretary of State of Maine reflecting that the Act had been accepted by a majority vote of the legal voters within that District. Subsequently the Act was amended several times; however, it appears that such District still exists.

5 M.R.S.A. § 1092 provides that

"The employees of any ...water district...may participate in the retirement system, to the full extent of any and all benefits provided for in this chapter provided the ...Trustees of a water district...approve such participation and file with the board of trustees a duly certified copy of the resolution...approving such participation and the extent of the benefits which shall apply."

Accordingly, it appears that the Bingham Water District is eligible to become a participating district and can thus participate if its trustees so approve and file its resolution with the Maine State Retirement System board of trustees.

CRL/mf

Charles R. Larouche