

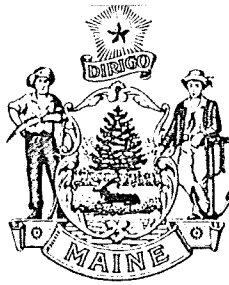
MAINE STATE LEGISLATURE

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80-144
80-44

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AUGUSTA, MAINE 04333

February 25, 1980

Philip R. Gingrow
Assistant Executive Director
Maine State Retirement System
State Office Building
Augusta, Maine 04333

RE: Creditable Service for Former Employees of Municipal Court

Dear Mr. Gingrow:

You have requested an opinion on the question of whether an individual employed as a clerk in a municipal court during the years 1939-1946 is entitled to credit for such service for retirement purposes. While the resolution of your question is not perfectly clear, my conclusion is that such employment is service as a state employee for which retirement credit¹ is available.

The retirement law definition of "employee" has since its original enactment contained the following relevant language:

"Employee" shall mean any regular classified or unclassified officer or employee in a department... See P.L. 1941, c. 328, §227-A (3); 5 M.R.S.A. §1001(10).

¹ Of the period in question, employment prior to the effective date of P.L. 1941, c. 328, by which the Retirement System was established, is credited as prior service; after the effective date of c. 328 it is credited as membership service. See §227-D, c. 328, P.L. 1941; 4 M.R.S.A. §1094(1) and (6).

The State personnel law throughout the period in question, as now, included in the unclassified service

"... "Officers and employees in the judicial service of the state." See P.L. 1937, c. 221, §7(4); R.S. 1944, c. 59, §7(IV); R.S. 1954, c. 63, §11(IV); 5 M.R.S.A. §711(1)(D).

The State's court system, as it has existed in various organizational forms, is established under the authority of Article VI, §1 of the Maine Constitution, which provided at the time in question, as now:

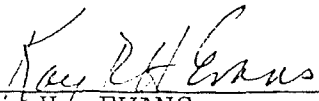
"The judicial power of this State shall be vested in a Supreme Judicial Court, and such other courts as the Legislature shall from time to time establish."

The municipal courts were created by statute pursuant to this constitutional provision. See R.S. 1930, c. 144, §1; R.S. 1944, c. 96, §1; R.S. 1954, c. 108, §3-A, for general provisions applicable to all municipal courts. The individual municipal courts were separately established, see, e.g., P.L. 1905, c. 352, and administrative provisions governing, e.g., salaries, method of payment of judges, recorders, clerks, etc., varied among the separate courts. It appears that, in general, clerks of municipal courts were employed at the discretion and direction of the municipal court judge.

Based on the above elements, I conclude that the municipal courts were a part of the constitutionally-based, legislatively-established judicial system of the State and that persons employed therein were included within the State's unclassified service as "officers (or) employees in the judicial service of the State."

Such persons would therefore fall within the retirement law definition of "employee" and would be entitled to receive credit for retirement purposes for such service.

To the extent that this opinion is inconsistent with the opinion of the Attorney General of December 30, 1964, that opinion is overruled.



KAY R. H. EVANS
Assistant Attorney General

KRHE/ltn