

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

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These facts being so, it follows that the rules and regulations were not intended to govern "idle elevators" as you define them.

JAMES GLYNN FROST
Deputy Attorney General

May 27, 1960

To: Maine State Retirement System

Attention: Edward L. Walter

Re: Retirement Fund

Upon your advice the son of the late _____, _____ Maine, requested this office to give an opinion re the retirement fund accumulated by his father.

It appears that his father ceased working for the Town of _____, a local participating district in the Maine State Retirement System, on September 26, 1959. Under date of October 1, 1959, Mr. _____ made application for retirement, effective October 1, 1959. On November 3, Mr. _____ died, leaving \$2,288.96 in the retirement fund.

The Board issued a check in the amount of \$117.39 to the estate of the deceased, and advised that the remainder of the \$2,288.96 was not available, benefit-wise, under the law, to any other person.

The son claims that under the provision of Section 9, II of Chapter 63-A, Revised Statutes of 1954 as amended, he should be entitled to some benefit:

"Sec. 9.

. . .

"II. Should a member die any time after attaining eligibility for retirement under any of the provisions of this chapter but before any election in accordance with the provisions of section 12 becomes effective, the following benefits shall be payable: . . ."

The Board answers by saying that the father died *after* the time within which he could have elected an option under the provision of section 12. Because the said section provides that retirement allowances shall be paid in equal monthly installments, the Board has determined that a period of 30 days is the time within which, after application for retirement, that an election can be made, and at the end of which time payment becomes normally due.

"Sec. 12. Payment of retirement allowances. All retirement allowances shall be payable for life in equal monthly installments including any fraction of a month up to the date of death. Upon attainment of eligibility for retirement and *until the first payment on account of a retirement allowance becomes normally due*, any member may elect to convert the retirement allowance otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of one of the optional forms named below; provided, however, that an election of an optional benefit

shall become effective on the date on which the first payment normally becomes due.”

An additional factor to be considered, and which you drew to our attention, is the matter of dates on Mr. application for retirement.

While the application was apparently dated by Mr. on October 1, 1959, the jurat was dated October 19, 1959, by , Treasurer of the Town of , and the application itself was received by the System on October 21, 1959.

The System counted thirty days commencing with October 1, 1959, and Mr. died three days after such thirty-day period.

If counting had started from the day the application had been received, then death would have been within the thirty-day period.

The question here can be resolved by determining the time from which date the counting of the thirty-day period should commence.

We are of the opinion that the thirty-day period did not begin to run until receipt by the System of the application; and that in the present case the disposition of the retirement fund should be made under the provisions of Section 9, II.

The first step in the normal procedure of one desiring to be retired is his filing of a written application to the Board of Trustees.

“Sec. 6. Service retirement.

I.

A. Any member who at the attainment of age 60 is in service may retire at any time then or thereafter on a service retirement allowance upon written application to the Board of Trustees setting forth at what time he desires to be retired. . .”

As a general rule, where it is required that an application must be made to a particular body before an act can be accomplished, that body is presumed not to be aware of such application until it has been received or filed. To our knowledge there is no section in the Retirement law which appears to except the instant application from the general rule. We, therefore, are of the opinion that the filing of the application with the Board is a condition precedent to retirement. It must follow that the time when “the first payment on account of a retirement allowance becomes normally due”, as provided by section 12, must be a period of time commencing with the date of receipt of the application for retirement.

JAMES GLYNN FROST
Deputy Attorney General

June 7, 1960

To: Sulo J. Tani, Director, Research & Planning of Economic Development

Re: Federal Funds Re Urban Renewal

This opinion is submitted to you in connection with an application being submitted to the Urban Renewal Administration of the Housing and