

# MAINE STATE LEGISLATURE

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E.L. Walter, Asst. Exec. Secretary

Maine State Retirement System

George C. West, Deputy

Attorney General

**Legislative Service Credit for Members of the Maine State Retirement System**

**FACTS:**

The 102nd Legislature enacted Chapter 339 of the Public Laws. This chapter reads as follows:

"Sec. 1, R.S., T. 5, § 1001, sub-§ 10, amended. The first sentence of subsection 10 of section 1001 of Title 5 of the Revised Statutes is amended to read as follows:

"Employee" shall mean any regular classified or unclassified officer or employee in a department, including teachers in the state teachers' colleges and for the purposes of this chapter, teachers in the public schools, but shall not include any member of the Legislature or the Council or any Justice of the Superior Court or Supreme Judicial Court who is now or may be later entitled to retirement benefits under Title 4, section 5, and Title 4, section 103, nor shall it include any Judge of the District Court who is now or may be later entitled to retirement benefits under Title 4, chapter 3, nor shall it include any member of the State Police who is now entitled to retirement benefits under Title 25, chapter 195.

"Sec. 2. R.S., T. 5, § 1094, sub-§ 3, amended. Subsection 3 of section 1094 of Title 5 of the Revised Statutes is amended by adding a new paragraph to read as follows:

'Any member who has served as a member of either the House of Representatives or the Senate of the State of Maine shall be entitled to receive the appropriate creditable service for such legislative service. Any member of the retirement system who does serve as a member of the House of Representatives or the Senate shall have deductions taken from his salaries and shall be entitled to all applicable rights and benefits of this Title. Any such

member shall become entitled to receive time credits for the duration of his election or until such time as he shall officially resign from the House of Representatives or the Senate, but in no instance shall he receive more than one year of creditable service in any one-year period.' "

**QUESTION NO. 1:**

May a present member of the legislature make payment for legislative service and immediately receive credit therefor?

**ANSWER NO. 1:**

Yes.

**OPINION:**

Prior to the enactment of the above law, members of the legislature were specifically excluded from membership in the Maine State Retirement System. 5 M.R.S.A., Sec. 1001, subsection 10. The amendment to this section, quoted supra, clearly indicates legislative intent that for purposes of the retirement law members of the Legislature shall be deemed "employees."

There is a presumption that an amendment changes the meaning of a statute. Bugynski et al. v. County of Knox, et al., 159 Maine 52 @ 59. There is nothing in the retirement law or the new amendment to rebut the presumption. In fact, the amendment to 5 M.R.S.A., section 1094, subsection 3, quoted supra, adds corroboration to the presumption.

Therefore, we conclude that present members of the legislature may join the retirement system on or after the effective date of P.L. 1965, Chapter 339.

**QUESTION NO. 2:**

When the next legislative session convenes, whether special or the regular biennial, would not each member be requested to accept or reject not only the retirement coverage but the Group Life Insurance as well?

**ANSWER NO. 2:**

Yes. Qualified.

**OPINION NO. 2:**

Having determined that members of the Legislature are eligible for membership in the Maine State Retirement System, it follows that legislators must be given an option of joining or refusing. See last sentence 5 M.R.S.A., Section 1091, subsection 1.

Actually, it is not necessary to wait for a convening of a special session to so advise members of the present legislature. Upon convening of each legislature new members must be advised of their rights under the Maine State Retirement System.

The above applies equally to rights to Group Life Insurance. 5 M.R.S.A., section 1151, subsection 1, provides for "each . . . employee of the State of Maine . . . who is eligible for membership in the Maine State Retirement System . . . shall . . . come within the purview of this section."

**QUESTION NO. 3:**

If a person who is now drawing a retirement allowance is able to substantiate legislative service, would Chapter 339 permit a change in the amount of the retirement allowance?

**ANSWER NO. 3:**

No.

**OPINION NO. 3:**

Section 2 of Chapter 339 quoted supra uses the word "member" in each of its three sentences. Thus, only "members" who have served in the legislature may receive appropriate creditable service for legislative service.

5 M.R.S.A., section 1001, subsection 12, defines "member" :

"Member" shall mean any employee included in the membership of the retirement system, as provided in section 1091."

Section 1091, subsection 6, states:

"Should any member withdraw his contributions, or should he become a beneficiary as a result of his own retirement, or die, he shall thereupon cease to be a member." (Emphasis supplied.)

The law clearly states a beneficiary or person drawing a retirement allowance is not a "member" of the system. Therefore, we must conclude that such a person may not secure an increase in his retirement allowance because of legislative service.

George C. West  
Deputy Attorney General

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