

# MAINE STATE LEGISLATURE

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Aeronautics Commission

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**FACTS:**

An airplane pilot employed, in that capacity, by the State for 17 years is 60 years of age. The pilot has accrued no other State service.

The applicable language is in 5 M.R.S.A., § 1121, 4:

"4. Wardens; State Police; Airplane Pilots; Firemen and Policemen; Sheriffs.

A. Any member who

(2) Is an airplane pilot employed by the State of Maine; or a member of a fire or police department including the chiefs thereof and sheriffs and deputy sheriffs, and, in any case, who has at least 25 years of creditable service in his respective capacity, may be retired on or after the attainment of age 55 on a service retirement allowance.

B. The retirement of any member in accordance with paragraph A. may be requested either by the member or, except in the case of a member of a fire or police department, by the head of his department. Retirement shall be compulsory at the attainment of age 60 except that on the request of the Governor with the approval of the Council, the board of trustees may permit the continuation for periods of one year, as the result of each such request, of the service of such member.

C. The total amount of the service retirement allowance of a member retired in accordance with paragraph A. shall be equal to  $\frac{1}{2}$  of his average final compensation, or, if retirement occurs at or after the attainment of age 60, equal to the amount of his total service retirement allowance as determined in accordance with subsection 2, if greater."

**QUESTIONS:**

1. Under the given facts, is the airplane pilot required to retire at age 60?
2. If so, how is the service retirement allowance computed?

**ANSWERS:**

See Reason.

**REASON:**

Prior to the enactment of the present statute by P. L. 1955, c. 417, § 1, the retirement law contained the following provisions relative to airplane pilots:

"Any airplane pilot who is employed as such by the State of Maine and who becomes a member of this system and who has creditable service of at least 25 years in this capacity may be retired at  $\frac{1}{2}$  of his average final compensation provided such retirement is requested either by such pilot or the head of his department. If any such pilot should become eligible under the provisions of this system, as a result of prior service and membership service, to a retirement allowance in excess of  $\frac{1}{2}$  of his average final compensation, he shall be entitled to the higher retirement allowance." P.L. 1949, c. 113, § 1; R.S. 1954, c. 64, § 6, VI.

"IX. In order to obtain the benefits of subsections . . . VI . . . , the member must have attained the age of 55, must have served 25 years in one of the above capacities, and anything to the contrary notwithstanding retirement is compulsory at attained age of 60, . . ." (Emphasis supplied.) (1949, c. 113, § 2. 1953, c. 350, § 1.)

The above-quoted subsection IX also contained a provision for yearly extensions beyond age 60 upon action by the Governor and Council.

Because of the underlined portion of subsection IX, we interpret the law to mean that retirement of an airplane pilot up to 1955 was compulsory at age 60 regardless of number of years of service in that capacity.

P.L. 1955, c. 417, was entitled "An Act Revising the Maine State Retirement System." This act repealed R. S. 1954, c. 64, and substituted therefor R. S. 1954, c. 63-A. Section 6 in the 1954 revision was entitled "Service retirement benefits" and consisted of 16 subsections. Chapter 63-A, section 6, was entitled "Service retirement" and consisted of 4 subsections.

Subsection IV, of the 1955 revision, consolidated subsections III, IV, V, VI, VII, VIII, and IX into one subsection. The only real change was that the phrase "and anything to the contrary notwithstanding," in subsection IX was omitted.

No changes significant to this opinion have been made since 1955. In 1963 the State Police were removed from the subsection and in 1965 the wardens of Inland Fisheries and Game, and Sea and Shore Fisheries, were also removed.

The only real question to be determined is whether the revision of 1955 effected a change in the substantive law, making retirement of an airplane pilot compulsory at age 60 regardless of years of service. We are of the opinion there was no substantive change effected by the 1955 revision.

Our court has said:

"When a statute is incorporated in a general revision of all the statutes, and reenacted along with the reenactment of other statutes, its purpose and effect are not changed unless there be some compelling change in the language. Usually a revision of the statutes simply reiterates the former declaration of legislative will." Cram, Reg. of Deeds v. Cumberland County, 148 Me. 515 @ 522.

We conclude that an airplane pilot must retire at age 60 regardless of number of years of service. Extensions, of course, may be granted by the Governor, with the approval of the Council.

We now consider the method of computing the service retirement allowance of an airplane pilot who retires at age 60 with less than 25 years of creditable service.

Under S.M.R.S.A., § 1121, A C, service retirement allowance for 25 years service is set at  $\frac{1}{2}$  average final compensation or if retirement is at age 60 the formula in subsection 2 may be used if it gives an allowance of more than  $\frac{1}{2}$  of average final compensation. However, both computations are based on 25 years of creditable service as an airplane pilot. Lacking the 25 years of creditable service there is no stated provision for computing the retirement allowance.

We must then turn to the general provisions for computing service retirement allowances. These provisions are in S.M.R.S.A., § 1121, 2. Hence, his retirement allowance will be based on  $\frac{1}{70}$  of his average final compensation multiplied by the number of years of membership service.

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