

# MAINE STATE LEGISLATURE

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July 20, 1966

E. L. Walter, Exec. Secretary

Retirement System

George C. West, Deputy

Attorney General

Military Service Credit

FACTS:

The 102nd Legislature in special session enacted Public Laws 1965, Chapter 497. This Chapter added subsection 13 to 5 M.R.S.A., § 1094, of the State Retirement Law. This Chapter reads as follows:

"Military Service Credit. Anything to the contrary notwithstanding, military service shall be credited to all state employees who are unable to otherwise qualify for military service credits. A state employee shall be entitled to this credit only if at point of retirement he shall have at least 15 years of membership service in the State Retirement System. The member shall contribute to the retirement system for each year of military service claimed 5% of the earnable compensation paid such member during the first year of state employment subsequent to service in the Armed Forces. Credit for military service under this subsection shall be limited to 4 years. Such credit shall be available to those persons who were separated under conditions other than dishonorable from the Armed Forces of the United States.

"It is the intent that these provisions shall apply to all persons, active or retired, but that for those already retired the effective date of any adjustment shall be not earlier than that date on which such time or credit is certified to the Maine State Retirement System."

Some questions have arisen which require interpretation of the new provision. It would seem proper to combine your questions No. 1 and 2 into one question.

QUESTION NO. 1:

Would the purchase of this credit be allowed for the purpose of determining time of retirement for special groups, such as state police, wardens, etc., and for early retirement such as 30 years of service?

ANSWER NO. 1:

Yes.

## OPINION NO. 1:

Our answer to this question is based on an interpretation of Chapter 497 that will place all persons having military service during national emergencies on a substantially equal basis.

5 M.R.S.A. § 1091, subsection 6, allows a member of the retirement system entering military or naval service to receive credit for such service toward retirement up to a maximum of 4 years. Certain conditions are set forth with which the member must comply.

Chapter 497 is an attempt to give persons who had military service while not in state employ the same benefits as is given those who go into service while employed by the state. This seems to be the intent as expressed in the first sentence.

"Anything to the contrary notwithstanding, military service shall be credited to all state employees who are unable to otherwise qualify for military service credits."

This new provision § 1094, subsection 13, must be read in conjunction with § 1091, subsection 6, and equated with it, as to retirement benefits. Although it cannot be said that a person was a member of the retirement system at a time he was not a state employee, it can be said that he is entitled to the same benefits for retirement purposes. That is what the legislature sought to do by its enactment of § 1094 subsection 13.

We conclude that military service credits earned prior to becoming a state employee may be used for determining time of retirement. The two subsections should be construed as complementary to each other.

## QUESTION NO. 2:

Does the 5% contribution apply if the Military Service was rendered during a period when contributions were not required by the statute, such as, World War I service or such other service prior to 1942?

## ANSWER NO. 2:

Yes.

OPINION NO. 2:

Any person seeking the military service credit must pay the contribution stated in order to obtain the credit.

In view of our answer to question No. 1, we should state that only military or naval service during the times stated in § 1091 subsection 6 shall be credited.

QUESTION NO. 3:

Does it appear that the purchase of this time may be permitted only at point of retirement?

ANSWER NO. 3:

No.

OPINION NO. 3:

The credit is allowable "only if at point of retirement he shall have at least 15 years of membership service in the Retirement System."

We believe that a person may present his proof of military service any time after the completion of 15 years' membership service. As a person must pay some amount of money, be it small or large, he should have an opportunity to make such payment while he is still employed.

We do not interpret the law as meaning that a person must wait until retirement to present his proof and pay his contribution.

Question 4, so-called, is omitted as question 3 is answered in the negative. However, we do not agree that an affirmative answer to question 3 automatically eliminates question 1.

QUESTION NO. 5:

Is a teacher in the public schools entitled to the military services credits?

ANSWER NO. 5:

Yes.

## OPINION NO. 5:

The language of the first paragraph of P.L. 1965, Chapter 497, would appear to apply to only "state employees." However, the second paragraph states in part:

"It is the intent that these provisions shall apply to all persons, active or retired . . . . "  
(Emphasis supplied.)

This language indicates that a retired teacher may benefit so it would be anomalous to hold that an active teacher could not have the same benefit.

Also, 5 M.R.S.A. § 1032, provides in the first paragraph:

"It is the intent and meaning of this chapter that all rights, credits and privileges enumerated herein shall be available to and shared in by all members of the system whether employees of the State or local participating districts." (Emphasis supplied.)

In view of these two provisions we would rule that this law is applicable to teachers and to local participating districts.

We would recommend that an amendment to P.L. 1965, Chapter 497, be presented to the next legislature which would delete the word "state" in 3 places. This amendment would leave the word "employee" standing as a meaningful word. It also would better define the basis of the 5% contribution, namely, "the first year of employment."

## QUESTION NO. 6:

This is really three questions concerning the method of determining "the earnable compensation paid such member during the first year of state employment."

You have made the following inquiries and statement:

"If the entrance salary is multiplied by the number of payroll periods to reflect one year of earnings in the case of the full-time state employee would you believe this to be in compliance? For the seasonal or less than a full-year employee would that amount earned in a

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full season and which amount might be certified by the employee and/or his department head be in compliance? Or for teachers, would a certification that the annual contractual amount for a teaching position of a similar capacity be in compliance?

"I might point out that the Board has indicated that we could institute such a procedure if in your opinion these methods did meet with the intent of the statute."

In general we believe an affirmative answer to the 3 questions would be proper. It is the duty and responsibility of the Board to decide the method to be used to determine contributions and amount of credits allowable.

There may be two areas where problems might arise. We believe that "the first year" is meant to cover 12 months from date of first employment.

1. A seasonal employee who was first employed for a partial season.
2. A teacher who also had state summer employment.

In each instance the full 12 months of compensation must be considered.

QUESTION NO. 7:

Does the statement in § 1094, subsection 13, that one who is "unable to otherwise qualify for military service credits" preclude a member who does or has received credit under § 1091, subsection 6, from obtaining further military service?

ANSWER NO. 7:

See Opinion No. 7 for answer.

OPINION NO. 7:

P.L. 1965, Chapter 497, which enacted 5 M.R.S.A. § 1094, subsection 13, provides in the first sentence:

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"Anything to the contrary notwithstanding, military service shall be credited to all state employees who are unable to otherwise qualify for military service credits."

In view of our answer to question No. 1 we must conclude that no person shall have more than 4 years of military service credit. However, in construing § 1091, subsection 6, and § 1094, subsection 13, as complementary to each other, we must conclude that a person may combine military service credits so as to have a total of no more than 4 years.

Because of our answer to this question, we believe no answer is required of the other question asked in your memo of June 15th.

George C. West  
Deputy Attorney General

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