

MAINE STATE LEGISLATURE

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November 13, 1967

E. L. Walter, Executive Secretary

Maine State Retirement System

Phillip M. Kilmister, Assistant

Attorney General

Application for refund of contributions by an employee of a participating local district who subsequently enters state service.

FACTS:

A member of the retirement system was a police officer in the City of Portland separating from the employ of the City on September 5, 1967. He had accumulated time due him and was retained on the payroll to September 19, 1967. He has been employed by the State Police as an officer in that Department since September 8, 1967.

QUESTION:

May the above-described employee obtain a refund of contributions which he has made to the retirement system upon termination of his employment for the City of Portland?

ANSWER:

Yes.

OPINION:

If an employee, as a member of the retirement system, terminates his service with the state or a local participating district, he may apply for and obtain a refund of his contributions.

"5 M.R.S.A. § 1096. Return of accumulated contributions.

"If the service of any member has terminated, except by death or by retirement under this chapter, he shall be paid, at any time thereafter upon proper application therefore the amount of his contributions together with such interest thereon, not less than 3/4 of accumulated regular interest, as the

board of trustees shall allow, provided no interest shall be included for any period beyond the 5th anniversary of the date of such termination of service if the member has less than 10 years of creditable service."

It would not appear to make any difference whether the termination of employment was for a period of one day or permanently. The above-described employee definitely terminated his employment with the City of Portland, a participating local district, and then immediately commenced employment for the state. This is to be distinguished from the situation where a state employee does not terminate his service but merely transfers his employment from one state department or agency to another and where employment with the state is at all times continuous.

5 M.R.S.A. § 1092 (11) provides in part as follows:

"Any member of the retirement system whose service is terminated as an employee, either as defined in section 1001 or as an employee of a participating local district, shall, upon subsequent re-employment as such an employee but with a new employer, provided he shall not have previously withdrawn his accumulated contributions, thereupon have his membership transferred to his account with his new employer, and shall be entitled to all creditable service resulting from his previous employment. . . ." (Emphasis supplied)

The above-quoted language merely provides that upon re-employment with the state, a former member of the retirement system who has not withdrawn his former contributions, shall have said previous contributions transferred to the account of his new employer and thereby receive creditable service for such employment. This language per se implies, as does the express language of 1096, that an employee may withdraw his previous contributions upon termination of service irregardless of any future re-employment which would bring him within the retirement system.

We do not construe strictly the language of 5 M.R.S.A. § 1092 (11) quoted supra as meaning that previous contributions need to have been actually withdrawn from the funds of the retirement system by a member prior to the terms of his re-employment, but rather that the person who has terminated his service has the right to withdraw said contributions as a result of his termination of service. An employee may have a reasonable time in which to decide whether or not he wishes to withdraw his contributions upon termination of employment and transfer. In the particular circumstances of this case the person needs to know which course is most advantageous to him.

Such a situation could have adverse results for a former employee who withdraws his previous contributions, never intending to again seek employment with either the state or a local participating district, and then accepts such employment in the future. However, 5 M.R.S.A. § 1094 (10) provides an adequate safeguard for such an individual and provides a method of repayment which will insure a maximum retirement allowance to the re-employed individual at the time of his final termination of employment, or retirement from state service.

5 M.R.S.A. § 1094 (10) entitled "Former members" provides in part as follows:

"Any former member who withdraws his contributions after termination of service may, upon later restoration to membership and prior to the date any retirement allowance becomes effective for him, deposit in the Members Contribution Fund by a single payment or by an increased rate of contribution an amount equal to the accumulated contributions withdrawn by him together with regular interest thereon from the date of withdrawal to the date the deposit payment or payments are made. Upon the completion of such deposit the member shall be entitled to all creditable service that he acquired during his previous membership. . . ."

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