

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

earlier than that date on which such time or credit is certified to the Maine State Retirement System.”

In accordance with an opinion of the Attorney General, dated July 20, 1966, which holds that military service credit should be allowed toward the purchase of retirement for special groups, this credit was granted under section 1121, sub. 4A.

The service rendered to the Rockland Police Department should also be credited under 5 M.R.S.A. § 1211, sub. 4A consistent with an opinion of the Attorney General, dated March 8, 1963, which holds that an individual qualifies for this type retirement if he holds one or more in combination of the jobs enumerated therein. Since the job of a policeman is one of the jobs enumerated in this section, this time should qualify.

As the total time which should be credited this guard is more than twenty-five years, he would qualify under 5 M.R.S.A. § 1121, sub. 4A for a special retirement. Of course, he must pay back contributions for his police duty with the City of Rockland in order to make his twenty-five years.

WARREN E. WINSLOW, JR.
Assistant Attorney General

April 4, 1968
State Police

Major Ralph E. Staples, Deputy Chief

Application of longevity pay increases to the pensions of retired State Police Officers and their surviving widows.

FACTS:

In your memorandum under date of March 11, 1968 you have formally requested a review of an opinion of this office dated December 18, 1963 which held that retired State Police Officers are not entitled to an increase in retirement pay based upon longevity compensation authorized by the Legislature to be paid to active members of the State Police. Contingent upon a reversal of our 1963 ruling in regard to the applicability of longevity pay increases to retired State Police Officers, you have asked an additional question relative to the applicability of such longevity pay to retirement benefits payable to the surviving widows of retired State Police Officers. Basically the two questions which you pose may be stated as follows:

QUESTION NO. 1:

Are State Police Officers retired prior to the date of enactment of the statute authorizing longevity pay to active members of the force, entitled to an increase in their retirement pay based upon longevity pay authorized by such legislation?

QUESTION NO. 2:

Are widows of retired State Police Officers, who enlisted prior to July 9, 1943, entitled to an increase in their survivor benefit payments based upon longevity pay applicable to active State Police Officers?

ANSWERS:

We answer both questions in the affirmative.

OPINION:

In an opinion of this office dated December 18, 1963 regarding the application of longevity pay to retired State Police Officers in Maine, the final paragraph reads as follows:

“Longevity is, therefore, a recognition personal to an individual for his personal length of service. It, therefore, follows that it does not increase the salary of a specific position or grade. Hence, it cannot be considered for the purpose of increasing a retired state police officer’s pension.”

We do not feel constrained to adhere to the conclusion that longevity pay cannot be considered in increasing the over-all retirement base pay of a retiree.

There exists a split of authority as to whether longevity payments should be included in determining retirement allowances of pensioners retired prior to the enactment of statutes which provide additional compensation for public employees based upon length of service.

The landmark case of *Leitch v. Gaither*, 151 Md. 167, 134 A. 317 annotated in 118 A.L.R. 992 has never been overruled and holds that:

“Salaries paid to retired members of a police force are to be computed upon base pay of active members of the force, and not upon salary plus additional allowance for length of service.”

However, since the date of our opinion (December 18, 1963) we denote that the modern trend of court interpretation is to include “length of service” or “longevity” payments as part of the salary attached to the rank or position of retired public employees and to include same as part of the over-all salary base upon which to compute retirement payments.

“ ‘Longevity’ and ‘merit’ pay constitute part of ‘salary attached to the rank or position’ formerly held by retired or deceased members of city police and fire departments for purpose of computing fluctuating pensions to be paid to members or to their widows.” *Abbott v. Los Angeles*, 178 Cal. App. 2d 204, 3 Cal. Rptr. 127.

“Under municipal pension plan retired firemen and widows were entitled to receive pension payment based on basic monthly salary and longevity payment.” *Kilfoil v. Johnson*, (Ind. App.) 191 N. E. 2d 321.

A brief factual resume’ of the statutes upon which you base your questions may be stated as follows: In 1951 the Maine Legislature provided that retired members of the State Police shall receive one-half of the pay per year that is presently payable to members of their respective grade presently in service. (P. & S. 1951, c. 214, as amended by P. & S. 1953, c. 166) Twelve years later the Legislature enacted a statute (P. & S. 1963, c. 202) which provided for longevity payments to state employees “applicable to pay checks dated on or after January 1, 1964.” The Legislature in no manner indicated that such “length of service payments” should apply to any group of state employees in a retired status however.

• Pension laws are to be liberally construed in favor of those intended to be benefitted thereby. *Kilfoil v. Johnson*, supra. Although the longevity statute is not a pension law per se it is part and parcel of same. The State Police Officer of today is entitled to have longevity pay computed as part of his salary. Such pay attaches to the salary of his rank

or position. Since a retired state police officer is entitled to one-half of the pay per year that is presently payable to a member of the rank or grade which he held at the time of his retirement, it logically follows that this should include one-half of all of the pay which attaches to said rank or position.

We believe that the state police officer who retired prior to the enactment of the "longevity statute" is entitled to retirement pay based upon years of service in the same manner as his counterpart in active service who retires after the enactment of said longevity statute. To hold otherwise is to perpetrate an inequity upon those state police officers who retired prior to 1964.

It is inconsistent policy for the legislature to clearly evince an intention in P. S. 1951, c. 214 to equate the retirement pay of retirees as nearly as possible to the increased cost of living by providing that all retirees shall be entitled to one-half pay of active state police officers of their same rank, and later in time, to deny said retirees by implication, an increase in retirement pay based upon longevity.

In regard to the second question submitted our answer is based upon the same reasoning which leads to an affirmative conclusion to the first question.

P. L. 1965, c. 387, as amended by P. L. 1967, c. 454 provides as follows:

"A surviving widow shall be paid $\frac{1}{2}$ of the amount that any member of the State Police, including the Chief of the State Police, is receiving either as a pension or a disability retirement allowance under this chapter, and said payments shall continue for the remainder of her lifetime or until she should remarry. Payments to the member shall cease as of the day of his death and shall begin to his widow on the following day.

"This section shall apply to a surviving widow of any member of the State Police who at the time of his death had been eligible to or receiving a pension or a disability retirement allowance under this chapter. *Payments to those who were surviving widows on September 3, 1965 shall be based upon the amount of pension or disability retirement that said member would have been entitled to receive as of September 3, 1965 under this chapter.*" (Emphasis supplied)

As indicated by the above-italicized statutory language, it is immaterial when the retiree died. The surviving widow's retirement allowance is to be computed upon the amount of retirement pay which her husband would have been entitled to receive had he lived until September 3, 1965.

PHILLIP M. KILMISTER
Assistant Attorney General

April 5, 1968
Personnel

Willard R. Harris, Director

Status of Classified State Employees as Candidates for Offices Elected by the Legislature

SYLLABUS:

A state classified employee must resign from classified service before he can become a candidate for an office which is elected by the state legislature. This result is required under 5 M.R.S.A. § 679.