

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date October 10, 1968

To E. L. Walter, Executive Secretary

Dept. Maine State Retirement System

from Harry N. Starbranch, Assistant

Dept. Attorney General

Subject Retired Persons Restored to Service.

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## SYLLABUS:

A person restored to employment who is drawing a retirement allowance is permitted to earn up to the "average final compensation" that was used to compute his retirement allowance.

Title 5 M.R.S.A. § 1128 does not constitute authority to adjust the "average final compensation" defined in 5 M.R.S.A. § 1001, subsection 3.

A person must be a retiree on the effective date of any adjustment to retirement allowance made pursuant to 5 M.R.S.A. § 1128 in order to be eligible for such adjustment.

## FACTS:

The Board of Trustees of the Maine State Retirement System has presented the following facts to this Department:

"Under present practice when a person who is drawing retirement allowance, which may or may not include certain cost-of-living adjustments (Section 1128), is restored to employ he is permitted to earn up to the difference between the annual retirement allowance currently being paid, including adjustments, if any, and the average highest compensation which was used to compute the retirement allowance; and the resultant difference is that amount which the individual may earn in any one year from the date of said reemployment."

QUESTIONS:

The following questions were asked by the Board:

1. "The Board would like your opinion as to whether or not it is felt that this method is proper.
2. "The Board asks also if the amounts granted by the percentage adjustments may be excluded when the computations are made, that is, to subtract the base retirement allowance from the average highest compensation which would result in a larger earnable amount.
3. "Further, the Board asks if it would have the power to apply the percentage of any adjustment granted to the average highest compensation, thus increasing this figure so that after the subtraction there would result a greater earnable amount.
4. "Does the statute give the right, or does the Board have the power to allow adjustments to a person who had retired, had received an adjustment in retirement allowance, had cancelled his retirement allowance, had become reemployed in a covered position and had subsequently retired at which time the second retirement allowance is computed on the base formula and is paid exclusive of any adjustments which the person had previously enjoyed?"

ANSWERS:

1. No.
2. This question is moot due to the answer to Question #1.
3. No.
4. No.

REASON AS TO QUESTION #1:

On March 7, 1968, this Department ruled that a person who is drawing a retirement allowance is permitted to earn up to the "average final compensation" that was used to compute his retirement allowance (5 M.R.S.A. § 1123). The procedure that is presently being followed by the Board of Trustees in which such a person is permitted to earn only up to the difference between the retirement allowance being paid and his average final compensation is therefore not in accordance with the law.

REASON AS TO QUESTION #3:

In light of our answer to Question #1, Question #3 is deemed to be modified as follows:

The Board asks if it would have the power to apply the percentage of any adjustment granted to the average final compensation, thus increasing this figure?

Title 5 M.R.S.A. § 1128 only provides that the adjustments in question shall be made to the retirement allowance itself. No mention is made of the term "average final compensation" which is computed in accordance with 5 M.R.S.A. § 1001, subsection 3. Consequently, the "average final compensation", which is used in the computation of the retirement allowance, cannot be modified pursuant to the provisions of 5 M.R.S.A. § 1128. Since there is no authority for changing the "average final compensation", it must remain the same, assuming that it is properly computed.

REASON AS TO QUESTION #4:

Title 5 M.R.S.A. § 1128 provides that the percentage adjustments listed therein shall become effective on the first day of the month following the effective date of the act, which was the first day of the month following September 3, 1965. The effective date of the listed percentage adjustments was therefore October 1, 1965.

The aforementioned section further provides that on all future general adjustments made to active State employees the same percent increase or decrease shall be applied to all retirees.

Thus, the aforementioned adjustment that was effective on the first day of October, 1965 cannot be allowed at a later date nor can any other general adjustment be allowed as to a retiree if he was not in the status of a retiree at the date of such general adjustment.

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Assistant Attorney General

HNS/eh