

# MAINE STATE LEGISLATURE

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October 11, 1968

E. L. Walter, Executive Secretary

Maine State Retirement System

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SYLLABUS:

Payments included on a payroll for accrued vacation leave, accrued sick leave, or bonuses, constitute actual compensation and are to be included in the computation of "average final compensation" as defined in 5 M.R.S.A. § 1001, subsection 3.

FACTS:

The Board of Trustees through their Executive Secretary have advised that State employees upon separation from employment may be paid under applicable state personnel rules for their accrued vacation leave. We have further been advised that, under their applicable personnel rules, teachers as well as employees of participating local districts, upon separation from employment may be paid for accrued sick leave as well as ordinary accrued vacation leave and may receive certain bonuses in addition. All of the above payments are included on appropriate payrolls.

Title 5 M.R.S.A. § 1001, subsection 3, provides as follows:

"'Average final compensation' shall mean the average annual rate of earnable compensation of a member during the 5 years of creditable service as an employee in Maine, not necessarily consecutive, in which such average annual rate of earnable compensation is highest, or during his entire period of creditable service if such period is less than 5 years."

Title 5 M.R.S.A. § 1001, subsection 9, provides as follows:

"'Earnable compensation' shall mean actual compensation, including maintenance if any. In cases where compensation includes maintenance, the

board of trustees shall fix the value of that part of the compensation not paid in money. Any money paid by a school administrative unit under an annuity contract for the benefit of an employee shall be considered part of the employee's earnable compensation.

QUESTION:

Must payments for accrued vacation leave, accrued sick leave and/or bonuses be included in "average final compensation" as defined in 5 M.R.S.A. § 1001, subsection 3?

ANSWER:

Yes.

REASON:

It has been held in the courts that to compensate is to make suitable reward for services, State v. Skelton, 72 Neb. 552. Accrued leave payments then, whether for accrued vacation leave or accrued sick leave, would clearly constitute a part of an employee's earnings or compensation inasmuch as vacation or leave time would be a reward for services.

A bonus, on the other hand, may be compensation (Attorney General v. City of Hoburn, 317 Mass. 465) or it may be a gift. (Thomas v. Commissioner of Internal Revenue, 135 F.2d 378.) Here, where the bonuses in question are included on the appropriate payroll with proper deductions withheld, it would seem clear that the respective employers intend that the bonuses be treated as compensation.

Having once determined that the accrued leave and bonuses in question would constitute compensation, it follows that if they actually were paid, they would fall within the term "earnable compensation" as used in 5 M.R.S.A. § 1001, subsection 9. Such payments must be included in the computation of average final compensation.