

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

April 8, 1970  
Maine State Retirement System

E. L. Walter, Ex. Secretary

Increases in Maine State Retirement System Contributions

*SYLLABUS:*

The Board of Trustees of the Maine State Retirement System cannot increase contributions, under the provisions of 5 M.R.S.A. § 1095, following a decrease in contributions.

*FACTS:*

The Maine State Retirement System has asked the Attorney General for an opinion as to whether or not the System's Board of Trustees can increase required contributions under the provisions of 5 M.R.S.A. § 1095 where said Board has earlier reduced or eliminated additional contributions.

*QUESTION:*

Whether or not the Board of Trustees of the Maine State Retirement System can increase required contributions under the provisions of 5 M.R.S.A. § 1095, after having decreased contributions?

*ANSWER:*

No.

*REASONS:*

5 M.R.S.A. § 1095 reads in part as follows:

"Each member shall, after July 1, 1955, make a 5% contribution of earnable compensation to the retirement system as long as he is employed, any excess of contributions that have ever been made shall be used to increase the retirement allowance or may be refunded at point of retirement. After January 1, 1970, each such member shall make an additional contribution of 1.14% of earnable compensation. Should the actuary determine that all or part of said additional contributions are not required, the board of trustees, upon the recommendation of the actuary, has the right to *reduce or eliminate* such additional contributions." (Emphasis supplied).

The statute is clear that the Board of Trustees may *reduce or eliminate* additional required contributions. It is silent on whether or not said Board may *increase* those contributions (assuming that the Board had earlier reduced or eliminated additional contributions.) Since the only powers the Board has are derived by statute, and since the statute in question is silent on contribution *increases*, the Board does not have this power and may not *increase* required contributions, once they are decreased.

This conclusion is buttressed by an examination of 5 M.R.S.A. § 1062 sub § 6B and sub § 7C, which read in part as follows:

"6 B. . . . Should the actuary determine that this fund is larger than necessary

to meet obligations, the board of trustees shall have the right to *reduce* the rate of contribution. The board of trustees shall have the right to *increase* the rate of contribution after a reduction has been made, but shall not *increase* said rate to more than  $\frac{1}{4}$  of 1%.” (Emphasis supplied).

“7 C. Should the actuary determine that this fund is larger than necessary to meet obligations, the board of trustees shall also have the right to *increase* the rate of contribution after a reduction has been made but shall not *increase* said rate to more than  $\frac{1}{2}$  of 1%.” (Emphasis supplied.)

In §1062 the Legislature saw fit to spell out the power of the Board to *increase* as well as to *decrease* contributions. Since it did not do so in § 1095, no such power exists and cannot be exercised.

WARREN E. WINSLOW, JR.  
Assistant Attorney General

May 29, 1970  
Employment Security Commission

James C. Schoenthaler, Chairman

*SYLLABUS:*

The administration of the Employment Security Law is the responsibility of a majority of the commissioners and not the responsibility of any one individual commissioner.

*FACTS:*

Recently it has been believed that the three man Employment Security Commission is a cumbersome method of administering that agency. To that end an attempt has been made to have two members agree that the complete administration of the agency be placed in the hands of the chairman. This attempt has not been successful.

*QUESTIONS:*

1. When the Maine Employment Security Law says “it shall be the duty of the commission to administer this chapter,” does the word commission mean three Commissioners individually or does it mean the single majority voice of the three Commissioners?

2. Can the Commission delegate power and authority as it deems reasonable and proper for the effective administration of the law?

3. Does the law permit individual Commissioners, as individuals, to exercise authority, control or direction over agency personnel or is each Commissioner bound by the organizational structure and methods of procedure determined by the majority voice of the three Commissioners?

*ANSWERS:*

1. Majority of the Commissioners.
2. Within limits it may delegate power and authority.
3. Same as 1.