

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

Edward L. Walter, Exec. Secretary

Election of Retirement Benefits under Section 1124(3)

SYLLABUS:

A beneficiary of a deceased member who was eligible for retirement at the time of death may elect the benefits due a beneficiary of a member who died before being eligible for retirement without meeting the 18 month creditable service requirement.

FACTS:

A deceased member was eligible for retirement at the time of his death and now his designated beneficiary seeks to elect the benefits provided for under 5 M.R.S.A. § 1124(3). Section 1124(3) does not specify any specific benefits but it does permit a beneficiary to elect certain benefits which are available when the deceased died before reaching eligibility for retirement. The beneficiary has elected, under § 1124(3) to receive the benefits provided for under § 1124 1B(1) (a). Section 1124 1B(1) (a) limits the benefits provided therein those situations where the member had at least 18 months of creditable service within the 42 months prior to date of death. The member in question did not meet that requirement.

QUESTION:

Is it necessary for a deceased member who was eligible for retirement to also meet the 18 months of creditable service requirement for members not eligible for retirement before his beneficiary is entitled to those benefits?

ANSWER:

No.

REASONS:

The death benefits available upon the death of a member of this State's Retirement System may generally be broken down into 3 categories, namely, death before eligibility for retirement, death after eligibility for retirement but before actual retirement, and death after retirement. As one would expect, the benefits are generally greater when the deceased has recently retired and they become less in the case of one who has reached eligibility for retirement, and still less in the case of one who had not reached eligibility. The retirement laws place a premium on eligibility for retirement.

In a case where the deceased member was eligible for retirement, the estate or beneficiaries of the deceased are entitled to benefits not generally available when the deceased was not eligible for retirement. However, in addition to the special allowances

made for eligibles under § 1124(2), the law also gives to certain beneficiaries, or the members' estate, all of those benefits which would be available if the member had not been eligible for retirement. In such a case section 1124(3) permits designated beneficiaries to elect to take their benefits under § 1124(1) or under § 1124(2).

Section 1124(3) states in this regard that:

“ . . . The designated beneficiary if a spouse . . . may elect to receive either the benefits provided under subsection 1 or those provided under subsection 2, paragraph A or B but not both.”

In the present case the designated beneficiary wishes to elect to receive the benefits provided for under subsection 1, paragraph B, subparagraph (1). However, subparagraph (1) requires as a condition of eligibility that one have had at least 18 months of creditable service within the 42 months prior to date of death. The deceased member here involved did not meet that requirement.

The question here presented is whether a member must have met the requirements of subsection 1 B(1)(a) before his beneficiary may elect those benefits. More specifically, the question is whether the deceased member must have met the 18 months of creditable service before his beneficiaries may elect to receive the \$100 monthly benefits provided for under § 1124 1 B(1)(a).

Obviously the earlier-quoted language of subsection 3 does not expressly impose the conditions of subsection 1 on one electing the benefits thereof.

To imply that any election of the benefits of subsection 1 must be conditioned upon the limitations of that subsection would be to imply a limitation inconsistent with the general purposes of § 1124.

Subsection 3 provides a means whereby one eligible for retirement may obtain the benefits of one not eligible. If one were eligible to retire and had also met all of the conditions of subsection 1, then his beneficiaries would also be entitled to the benefits of that subsection without the authority of subsection 3. If subsection 3 is to be given any meaning and if the general principle of bestowing additional benefits on those eligible for retirement is to be furthered, then an election under subsection 3 must not be conditioned upon fulfilling the limitations of subsection 1.

In conclusion, one may elect under § 1124(3) to receive the benefits of § 1124 1B (1)(a) without having first completed 18 months of creditable service.

CLAYTON N. HOWARD
Assistant Attorney General

December 17, 1971
Education

Asa A. Gordon, Ass't. Commissioner,
School Admins. Services

School Committee's Acceptance or Rejection of High School Tuition Students.

SYLLABUS:

Whether a school committee must comply with a vote of the administrative unit that certain tuition students be accepted is not a State question. When voters of an