

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

William Blodgett, Ass't. Executive Director

Retirement – Purchase of Back Time.

*SYLLABUS:*

A former State employee who withdrew his membership contributions from the State Retirement System, and thereafter rejoined that system as an employee of a participating local district, is not entitled to obtain a transfer of his prior membership credit to his new membership account by tendering the former contributions plus interest.

*FACTS:*

Subject individual was employed by the State Department of Health and Welfare on June 27, 1949, joined the State Retirement System on January 2, 1950, separated from the State employment on June 23, 1951, applied for refund of his contributions to the State Retirement System on January 9, 1952, and received same on January 28, 1952. On November 2, 1963, he was employed by the Kennebec Water District, became a member of the State Retirement System and so continues to the present time. He now tenders to the State Retirement System a check in the amount of \$573.50, which represents his contributions, plus interest, for the period that he was a State employee in the Health and Welfare Department, with a request that credit for such period of membership as a former State employee be transferred to his present membership account as an employee of the participating local district, i.e., Kennebec Water District.

*QUESTION:*

Can a former State employee who requested and received a refund of his contributions to the State Retirement System while such an employee, and who subsequently becomes a member of that System while an employee of a participating local district, purchase a transfer of credit for the former membership to be added to his present membership account by tendering back his contributions plus interest for the former period?

*ANSWER:*

No.

*REASONS:*

5 M.R.S.A. § 1094, subsection 8, provides that a member –

“ . . . may if he so elects, pay into the Members' Contribution Fund any or all back contributions covering any or all of the period from July 1, 1942, to the date when such member first began to make contributions to the retirement system and receive therefor the proper membership credit for the period for which such back contributions are made.”

This provision would seem to authorize the subject individual to pay into the System at least any unpaid back contributions for the period June 27, 1949, when he first became a State employee, to January 2, 1950, when he first became a member of the System.

5 M.R.S.A. §1094, subsection 10, provides:

“10. Former Members. Any former member who withdrew his contributions after termination of service may, upon later restoration to membership and prior to the date any retirement allowance becomes effective for him, deposit in the Members’ Contribution Fund by a single payment or by an increased rate of contribution an amount equal to the accumulated contributions withdrawn by him together with regular interest thereon from the date of withdrawal to the date the deposit payment or payments are made. Upon the completion of such deposit the member shall be entitled to all creditable service that he acquired during his previous membership . . . .”

This provision would seem to authorize the subject individual to pay back into the System his withdrawn contributions and thereby to obtain a credit for such prior membership.

However, 5 M.R.S.A. §1092, subsection 9, provides:

“Notwithstanding anything to the contrary, the retirement system shall not be liable for the payment of any benefits on account of the employees or pensioners of any participating local district for which reserves have not been previously created from funds contributed by such participating local district, or its employees for such benefits.”

This provision appears to be couched in the terms of an overriding limitation upon the obligation of the System to pay benefits to employees of a participating local district. Benefits are not payable unless *reserves* have “been previously created from funds contributed by such local district, or its employees for such benefits.” Nevertheless, 5 M.R.S.A. §1092, subsection 11, states that:

“Any member of the retirement system whose service is terminated as an employee, either as defined in section 1001 or as an employee of a participating local district, shall, upon subsequent re-employment as such an employee but with a new employer, provided he shall not have previously withdrawn his accumulated contributions, thereupon have his membership transferred to his account with his new employer, and shall be entitled to all creditable service resulting from his previous employment.”

Thus, subsection 11 of 5 M.R.S.A. §1092 grants to a former member who becomes re-employed with a new employer the right to obtain a transfer of his former membership to his new membership account. This would require his former employer (in this case, the State) to transfer to his new employer (in this case, the Kennebec Water District)

“All funds in the retirement system contributed by his former employer on account of his previous employment . . . to liquidate the liability incurred by reason of such previous employment.” subsection 11, *Id.*

However, the right to obtain credit for the former membership is expressly conditioned by that subsection upon the requirement that – “he shall not have previously withdrawn his accumulated contributions – .”

Since subsection 11 of 5 M.R.S.A. §1092 deals definitively with the situation of re-employment with a *different* employer, it thus becomes clear that subsections 8 and 10 of 5 M.R.S.A. §1094 deal with the situation of employment with the *same* employer. This construction seems to be required to avoid rendering meaningless the

express proviso in 5 M.R.S.A. § 1092, subsection 11.

It is apparent from Chapter 101 of Title 5 of the Revised Statutes that employment in several different departments of the State of Maine constitutes employment with the *same* employer. It is equally apparent that employment by a local participating district constitutes employment by a new employer vis-a-vis the State.

Accordingly, since subject individual withdrew his contributions for membership in the System after termination of his employment with the State, he cannot upon his re-employment by a *new* employer, i.e., the participating local district, obtain a transfer of his former membership credit to his new membership account.

CHARLES R. LAROUCHE  
Assistant Attorney General

April 11, 1972  
Education

Asa A. Gordon, Asst. Comm. Sch. Adm. Serv.

Cooperative Agreements under Title 20 M.R.S.A. § 309

*SYLLABUS:*

A cooperative agreement under the provisions of Title 20 M.R.S.A. § 309 may not be utilized to carry out, as a specified educational function, the construction and operation of a school.

*FACTS:*

Chapter 276 of the Public Laws of 1971 authorized municipalities to enter into cooperative agreements for carrying out "specified educational functions." Under the provisions of section 309, which was added to Title 20 along with sections 309-A and 309-B by chapter 276, the State Board of Education is required to prepare a cooperative agreement, upon application of two or more municipalities, for submission to the voters of the municipalities involved, which agreement shall contain the conditions under which the specified educational function may be carried out.

*QUESTIONS:*

(1) May a cooperative agreement be prepared and entered into, under the provisions of Title 20, M.R.S.A. § 309, to carry out, as a "specified educational function," the construction and operation of a school?

(2) Would a project for the construction of a school, which is carried out by means of a cooperative agreement prepared and entered into pursuant to the provision of Title 20 M.R.S.A., § 309, be eligible for State School construction aid under Title 20 M.R.S.A., § 3457?

*ANSWERS:*

(1) No.

(2) The answer to question 1 obviates an answer to this question.