

MAINE STATE LEGISLATURE

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May 18, 1972

E. L. Walter, Ex. Director

Maine State Retirement System

Charles Larouche, Assistant

Attorney General

Retirement-Credit for Military Service for State Prison Personnel

SYLLABUS:

Maine State Prison personnel can claim military service credit under 5 M.R.S.A. § 1094, subsection 13, on the 20 years of creditable service required for retirement under 5 M.R.S.A. § 1121, subsection 4F, within specified limitations.

FACTS:

Stated in the question.

QUESTION:

Can personnel employed in the Maine State Prison claim military service credit under 5 M.R.S.A. § 1094, subsection 13, on the 20 years of creditable service in the specified prison employment capacities requisite for retirement under 5 M.R.S.A. § 1121, subsection 4F?

ANSWER:

Yes, subject to limitations specified in "reasons" hereunder.

REASONS:

5 M.R.S.A. § 1121, subsection 4F provides that any member who is one of the specified personnel of the Maine State Prison -

"who has at least 20 years of creditable service in his respective capacity, or cumulatively in any combination of such employment capacities, may be retired on or after the attainment of age 50 on a service retirement allowance which is equal to 1/2 of his average final compensation...."

5 M.R.S.A. § 1094, subsection 13 provides in pertinent part:

"Anything to the contrary notwithstanding, military service shall be credited to all

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state employees who are unable to otherwise qualify for military service credits. A state employee shall be entitled to this credit only if at point of retirement he shall have at least 15 years of creditable service in the State Retirement System. Credit for military service under this subsection shall be limited to 4 years. Such credit shall be available to those persons who were separated under conditions other than dishonorable from the Armed Forces of the United States.

It is the intent that these provisions shall apply to all persons, active or retired,"

It is clear from the language used in the general statutory provision of 5 M.R.S.A. § 1094, subsection 13, that the military service credit is available generally to all members of the retirement system. The specific and recently enacted section which governs Prison personnel, 5 M.R.S.A. § 1121, subsection 4F contains no language which would deny to such personnel the benefits generally available under 5 M.R.S.A. § 1094, subsection 13. Indeed, in view of the seemingly sweeping, overriding and all-inclusive language employed in that subsection 13, it would require very explicit language in other sections of Chapter 101 of Title 5 to preclude application of that subsection 13 to any member of the Retirement System.

As you have suggested in your memorandum to me of April 28, 1972, two examples of legislative denial of application of the 5 M.R.S.A. § 1094, subsection 13, military service credits are found in the more recent amendments of 5 M.R.S.A. § 1121, subsections 1C (State Police) and 1D (law enforcement officer in Inland Fisheries and Game and Sea and Shore Fisheries). You are also correct that the recent enactment of 5 M.R.S.A. § 1121, subsection 1E (forest ranger in the Forestry Department) permits application to a member who is a forest ranger of the benefits of military service credit under 5 M.R.S.A. § 1094, subsection 13.

It will be noted, of course, that the military service credit under 5 M.R.S.A. § 1094, subsection 13, does not become available until the member has 15 years of creditable service in the Retirement System, and such military credit is limited to 4 years. Subsection 13 also requires a specified contribution by the members

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for each year of military service credit. Also see Opinions of this Department to your Agency dated July 20, 1966 and August 17, 1966, on Military Service Credit, and April 4, 1968, on Pension Plans under 5 M.R.S.A. § 1121, sub. 4A.

CL/mf

Assistant Attorney General