

MAINE STATE LEGISLATURE

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NOT A FORMAL OPINION

July 6, 1972

E. L. Walter, Executive Director

Maine State Retirement System

Charles R. Larouche, Assistant

Attorney General

Retirement--Eligibility of Teacher for 11 1/2% increase when retirement age reached after the general retirement allowance adjustment but before the end of the school year.

This replies to your memo of June 12, 1972, concerning the above subject.

It appears that the subject teacher submitted a letter of intent on September 3, 1971, to retire on June 17, 1972, after the end of the 1971-72 school year, which letter was timely received by the Board of Trustees, Maine State Retirement System. On October 1, 1971, active state employees received an 11 1/2% increase as a general adjustment in state salaries, and on November 1, 1971, retired state employees received an 11 1/2% retirement allowance increase. On April 16, 1972, the subject teacher attained age 60 and then became eligible for retirement.

I understand your question to be whether or not the subject teacher is entitled upon such retirement to receive an 11 1/2% retirement allowance increase, in view of the provisions in 5 M.R.S.A. § 1128, especially in the last paragraph of that section.

The answer to that question is negative.

The last paragraph of 5 M.R.S.A. § 1128 reads:

"Notwithstanding anything to the contrary, any teacher who is teaching under a valid contract during any school year in which a general salary adjustment to state employees becomes effective and which results in a retirement allowance adjustment as provided in this section, may continue to teach until such time as said contract is fulfilled and may then apply for a retirement allowance, the effective date of which can be no earlier than the day following completion of the contractual obligations. The amount of the retirement allowance shall be increased by that percentage that had been applied to retirement allowances during said school year. This provision shall apply only if the teacher submits a letter of intent to retire upon fulfillment of said contract and which letter shall be countersigned by the pertinent superintendent of schools, headmaster of an academy or other comparative appointing authority, and in possession of the board of trustees no later than the date on which the general salary adjustment is effective to state employees."

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The foregoing provision is clearly intended to serve as an inducement for teachers eligible for retirement when a general retirement allowance adjustment is effected to continue to teach until completion of the school year, instead of retiring prior to the effective date of such general retirement allowance adjustment, thereby obtaining the benefit of such a general retirement allowance increase. The provision in the last paragraph of 5 M.R.S.A. § 1128 assures such teacher that she will not lose the benefit of an increased retirement allowance adjustment if she continues to teach until the end of the school year. However, the subject teacher was not eligible for retirement prior to the general retirement allowance increase, and, hence, was not within the limited class of teachers to which this special provision applies. The object of this classification is to obtain a benefit for the state in the form of an uninterrupted school year teaching service in return for the postponement by such teacher of an available increased retirement benefit. Such a classification is clearly reasonable.

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Assistant Attorney General

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