

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 illness before retirement prevents completion of school year.

This replies to your memo of June 13, 1972, concerning the above subject.

It appears that the subject teacher was eligible to retire prior to October 1, 1971. It also appears that 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. It further appears that before October 1, 1971, the subject teacher was eligible for retirement, and that prior to October 1, 1971, she had submitted a letter of intent to retire at the end of the 1971-72 school year, which letter was timely received by the Board of Trustees, Maine State Retirement System. It further appears that the subject teacher became ill subsequent to the general retirement allowance increase, which illness rendered her unable to complete the school year, and she requested retirement on Jan. 29, 1972.

I understand your question to be whether or not the subject teacher is entitled to receive an 11 1/2% 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 affirmative.

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. 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.

On the facts presented, the Board of Trustees could find that she acted in good faith in submitting her letter of intent; it could also find that her illness completely prevented her from teaching the remainder of the school year; and it could further find that she had done everything she could to fulfill her teaching contract. If the Board were to make such findings, it could further conclude that on January 29, 1972, she had "fulfilled her contractual obligations" to the extent of her capability and that she met all the conditions required of her by the last paragraph of 5 M.R.S.A. § 1128. It should be noted that this conclusion would give her nothing that she had not previously been entitled to obtain. However, the foregoing "conclusions" which I have indicated as being "permissible" must be determined by the Board of Trustees, in its own final and independent judgment, after considering all available evidence. Such judgment by the Board is required by 5 M.R.S.A. § 1032, the first paragraph of which reads:

"It is the intent and meaning of this chapter that all rights, credits and privileges enumerated herein shall be available to and shared in by all members of the system whether employees of the State or local participating districts and it is expressly provided that the board of trustees shall in all cases make the final and determining decision in all matters affecting the rights, credits and privileges of all members of the system, whether in participating local districts or in the state service. The board of trustees shall make the final and determining decision on all matters pertaining to administration, actuarial recommendations, the reserves and the investments of the system."

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