

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

ANSWERS:

- (1) No.
- (2) and (3). The answer to question 1 obviates answers to questions 2 and 3.

REASONS:

There appears to be no provision in the Maine Banking Laws (Title 9, Maine Revised Statutes) which gives to the Bank Commissioner the authority to declare, for whatever reason, a general statewide moratorium on the formation of new banking institutions.

CRAIG H. NELSON
Assistant Attorney General

August 11, 1972
Retirement

W. G. Blodgett, Assistant Executive Director

Retirement – Deduction of Workmen’s Compensation from Retirement Allowance of Participating Local District Employee.

SYLLABUS:

An occupational disability retirement allowance payment by the Maine State Retirement System to an employee of a participating local district cannot be reduced by the amount of the workmen’s compensation payment being made to such employee under coverage provided by that district.

FACTS:

A fireman was employed by the Town of Brunswick, which is a participating local district in the Maine State Retirement System. On February 21, 1971, the Maine State Retirement System granted him an occupational disability retirement allowance. The fireman also received an allowance of workmen’s compensation for that disability under coverage provided by the Town of Brunswick. The Maine State Retirement System reduced the retirement allowance payment by the amount of the workmen’s compensation payment which the fireman was receiving, on the assumption that such reduction was required by 5 M.R.S.A. § 1122, sub-section 5, when viewed in light of 5 M.R.S.A. § 1092, subsection 8.

QUESTION:

Whether an occupational disability retirement allowance payment by the Maine State Retirement System to an employee of a participating local district may be reduced by the amount of the workmen’s compensation payment being made to such employee under coverage being provided by the participating local district?

ANSWER:

No.

REASONS:

5 M.R.S.A. § 1122, subsection 5 states:

“5. Disability payments under other laws. Any amounts which may be paid or payable by the State under any workmen’s compensation or similar law except amounts which may be paid or payable under Title 39, section 56, to or on account of any member or retired member on account of any disability shall be offset against the amount of any retirement allowance payable under this section on account of the same disability.”

5 M.R.S.A. § 1092, subsection 8 states:

“8. Benefits as if State employees. Employees who become members under this section and on behalf of whom contributions are paid as provided in this section shall be entitled to benefits under the retirement system for which such contributions are made as though they were state employees.”

It appears from 5 M.R.S.A. § 1092, subsection 8, that participating local district employees “shall be entitled to benefits under the retirement system . . . as though they were state employees.” This seems to mandate equal benefit treatment for all members of the retirement system, regardless of status as a State employee or a participating local district employee.

It appears from 5 M.R.S.A. § 1122, subsection 5, that a retirement benefit must be reduced by any workmen’s compensation payment “paid or payable by the State.” Workmen’s compensation payments provided by a participating local district are *not* “amounts – paid or payable by the State” Hence, it appears from 5 M.R.S.A. § 1122, subsection 5, that a State employee who receives a workmen’s compensation payment will not receive retirement benefit treatment equal to a participating local district employee.

It seems that 5 M.R.S.A. § 1092, subsection 8 is in direct conflict with 5 M.R.S.A. § 1122, subsection 5. However, the Legislature is supposed to have a consistent design of policy and to intend nothing inconsistent or incongruous. *Whorff v. Johnson*, 143 Me. 198. Statutes in *pari materia* are to be construed together so as to carry out the legislative will. *Stuart v. Chapman*, 104 Me. 17; *Morton v. Hayden*, 154 Me. 6; *Palmer v. Inhabitants of Town of Sumner*, 133 Me. 337; and sections 4703, 4704, and 4706, *Sutherland on Statutory Construction*, 3rd. Edition.

“ * * * A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error.” *Sutherland*, p. 339, § 4705.

With these principles in mind, let us re-examine 5 M.R.S.A. § 1092, subsection 8 and 5 M.R.S.A. § 1122, subsection 5. It seems that the subject of 5 M.R.S.A. § 1092, subsection 8, is the computation of retirement benefit entitlement; in that connection, the Legislature has decreed that all members of the retirement system shall be treated the same. It appears that the subject of 5 M.R.S.A. § 1122, subsection 5 is the offsetting of certain other benefits against the payment of the retirement benefit; in that connection, the Legislature has decreed that any workmen’s compensation benefit which is “paid or payable by the State” shall be offset against retirement allowance payable. Thus, the first deals with computation of entitlement to retirement benefit, and the second deals with certain offsetting against the retirement allowance to be paid; there must be equal treatment as to the first but not as to the second.

This construction gives effect to both sections. Furthermore, it seems to be required

by the explicit language in 5 M.R.S.A. § 1122, subsection 5. The definitive treatment in such specific and unambiguous words in this latter section must be viewed as creating a limitation on the general provision in 5 M.R.S.A. § 1092, subsection 8.

CHARLES R. LAROUCHE
Assistant Attorney General

September 8, 1972
Educational & Cultural Services

Asa A. Gordon, Assoc. Comm., Educ. Mgmt. Res.

Fluoridation of Individual School Water Supplies

SYLLABUS:

A local public school committee or board of directors may accept a gift of a fluoridation system for the water supply used in a school building. However, the committee or board may not, in the absence of prior approval of the municipality or municipalities served by the public school, authorize the operation of such a system.

FACTS:

The State Department of Health and Welfare has available approximately \$20,000.00 in Federal Funds which it desires to donate to various school officials to be utilized to provide fluoridation systems in their respective public schools. There are 20 prospective donee schools, none of which is served by a municipal water supply.

QUESTION 1:

May a local school committee or board of directors accept a gift of a fluoridation system for the water supply used in a school building?

ANSWER TO QUESTION 1:

Yes.

QUESTION 2:

May a local school committee, in the absence of prior approval of the municipality or municipalities served by the public school, authorize the operation of a fluoridation system for the water supply used in a school building?

ANSWER TO QUESTION 2:

No.

REASONS:

There is nothing in the laws of the State which would prohibit a local public school committee or board of directors from accepting a gift of a fluoridation system for the