

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

Harold E. Trahey, First Deputy Comm.

Variable Benefit Contracts

SYLLABUS:

A separate account rider on a group annuity contract which provides for guaranteed, fixed employee benefit payments and variable employer contribution payments does not constitute a variable benefit contract which must be authorized under 24-A M.R.S.A. § 2537, subsection 6.

FACTS:

It appears that an insurance company plans to issue a separate account rider for a group annuity contract. The payments to the employees under this group annuity contract are in guaranteed, fixed amounts as pension payments to employees upon their retirement. This rider would enable the employer to allocate any part of the total contribution to a separate account for equity investments. The employer can withdraw any amounts of money from the separate account and put it into the general fund to purchase the annuity or to pay the benefits to the employees. If the investment experience of the separate account is favorable, total amounts paid in by the employer upon the group annuity contract or to the separate account may decrease so long as there are sufficient funds to purchase the annuities at the guaranteed rate or to provide the employee benefits as required by the plan.

QUESTION:

Does a separate account rider on a group annuity contract which provides for guaranteed, fixed employee benefit payments and variable employer contribution payments constitute a variable benefit contract requiring authorization under 24-A M.R.S.A. § 2537, subsection 6?

ANSWER:

No.

REASONS:

24-A M.R.S.A. § 2537, subsection 6, provides:

“No insurer shall deliver or issue for delivery within this State any contract or agreement providing benefits in variable amounts under this section unless it is . . .” authorized thereunder.

The real question presented is what does this statute mean by the phrase “benefits” provided by a contract issued by an insurer? It is clear from the facts presented that the purpose of the contract is to provide pension payments to employees upon their retirement. The intended beneficiaries of this contract are the employees. Since it is

undisputed that these pension payments are to be in guaranteed, fixed amounts, 24-A M.R.S.A. § 2537, subsection 6 would seem to be inapplicable; that Section applies only when the benefits under the contract are to be in *variable* amounts.

Nevertheless, it has been suggested that the separate account rider is a contract which provides a “benefit” to the employer, in that it provides a possible method whereby the employer can reduce his contribution payments under the basic contract, dependent upon the varying success of the separate account equity investment. However, it is clear that the Legislature could not have intended to include this within the meaning of the word “benefits” as used in 24-A M.R.S.A. § 2537, subsection 6. It is apparent that the statute refers to the *basic* contract – which contemplates the annuity payments – and to the *ultimate* beneficiary of that contract – the retired employee.

24-A M.R.S.A. § 2537, subsection 1 unequivocally establishes this to be the correct meaning of the word “benefits.” That section reads:

“Any domestic insurer may establish one or more separate accounts, including that type known as a unit investment trust, as defined by the Investment Company Act of 1940, Stat. 789, 15 U.S.C. § 80A, et seq., as amended, and may allocate to such separate accounts, in accordance with the terms of a written contract or agreement or annuity or pension, profit-sharing or retirement plan, whether or not qualified under the applicable provisions of the Internal Revenue Code, 68A Stat. 1, 26 U.S.C. § 1, et. seq., as amended, with any individual or any group, any amounts paid or remitted to or held by the insurer which are to be applied to provide for *annuities or other benefits payable in fixed and guaranteed or variable dollar amounts, or both.*” (Emphasis supplied.)

The phrase “annuities or other benefits payable” plainly refers to the ultimate payment to the ultimate beneficiary – the retired employee.

The express recognition in 24-A M.R.S.A. § 2537, subsection 1 that a separate account contract can provide for either fixed or variable benefits also reveals that the Legislature could not have intended the word “benefits” to refer to the possible favorable results which might enure to the employer from the investment experience of the separate account; by its very nature, the anticipated result from an equity account cannot be deemed to be “fixed and guaranteed.” This construction is further indicated by the opening phrase in 24-A M.R.S.A. § 2537, subsection 5, which reads:

“If the contract or agreement provides for *payment of benefits* in variable amounts, . . .”

The possible appreciation in an equity account cannot be deemed as a “payment of benefits” provided by contract.

Accordingly, it is clear that the word “benefits” does not refer to the possible equity appreciation in the separate account, and that such word refers to the annuity payments to the retired employee, which payments – “benefits” – are to be “fixed and guaranteed.” Therefore, the contract to be issued by the insurer does not provide for “benefits in variable amounts” and subsection 6 of 24-A M.R.S.A. § 2537 is inapplicable to such a contract.

CHARLES R. LAROUCHE
Assistant Attorney General