

MAINE STATE LEGISLATURE

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December 10, 1973

William G. Blodgett, Exec. Dir.

Maine State Retirement System

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Participating District Employee Request to Transfer State Service
Credit Acquired After District Employment

It appears that H was a Legislator from January 6, 1943, to September 1, 1953, and a Judge of Probate from September 1, 1953, to August 31, 1973. It further appears that he became a member of the Retirement System as a County employee (Probate Judge) on November 30, 1955, and that on September 14, 1965, he purchased a State service credit for his service while Legislator. H now requests a single retirement allowance as a participating district employee based upon his combined state and county employment. Contributions to the Retirement System by the County have been based solely upon H's service as a county employee and have not taken into account any State service credit.

You have asked the following questions:

Is it correct to keep two separate entitlements for this person, one for his service as a legislator and one for his service as a Judge of Probate in Cumberland County?

Could the two periods of service be combined and a retirement allowance charged to Cumberland County if the County accepted the liability to provide reserves for same?

If Cumberland County agreed to let this person pick up his county time from 9-1-53 to 11-30-55 (when he became a member), would this result in continuous membership from 1/6/43, (even though a Legislator could not have been a member until 1965) and allow transfer of State service to County?

The answer to the first question is affirmative. The second and third questions seem to be hypothetical, and, hence, are not answered at this time.

5 M.R.S.A. § 1092, sub-§ 9, provides:

"Notwithstanding anything to the contrary, the retirement system shall not be liable for the payment of any benefits on account of the employees or pensioners of any participating local district for which reserves have not been previously created from funds contributed by such participating local district, or its employees for such benefits."

It is clear from the above-quoted provision that the Retirement System cannot pay a retirement benefit to this County retiree based upon a combination of State and County service since the County has not made the contributions necessary to fund the reserves therefor.

The critical question is whether or not H is entitled to compel the County to make such additional contributions. 5 M.R.S.A. § 1092, sub-§ 11 provides:

"Any member of the retirement system whose service is terminated as an employee, either as defined in section 1001 or as an employee of a participating local district, shall, upon the subsequent re-employment as such an employee but with a new employer, provided he shall not have previously withdrawn his accumulated contributions, thereupon have his membership transferred to his account with his new employer, and shall be entitled to all creditable service resulting from his previous employment."

Since H was not a member of the Retirement System prior to his employment with the County, he was not entitled to have his subsequently acquired State service credit transferred to the County and to thereby impose an obligation on the County for additional reserve funding.

Compare 5 M.R.S.A. § 1092, sub-§ 5, and the formal opinions of this Office to your Office dated August 25, 1965 (Legislative Service Credit for Members of the Maine State Retirement System); and dated April 7, 1972 (Retirement - Purchase of Back Time).

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NOT A FORMAL OPINION