

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date January 30, 1974


To W. G. Blodgett, Executive Director Dept. Maine State Retirement System
From Charles R. Larouche, Assistant Dept. Attorney General
Subject Workman's Compensation Set-Off Re Disability Retirement Allowance of District Employee Disabled Prior to October 3, 1973.

This replies to your memo of January 21, 1974.

It appears that D, an employee of a participating local district and member of the Maine State Retirement System, was injured during such employment on December 17, 1972, was incapacitated as a result of this injury during several subsequent periods, and on July 24, 1973, became totally and permanently incapacitated. On August 27, 1973, he submitted an application for occupational disability retirement allowance; the medical board concluded on September 20, 1973, that D was incapacitated as a result of injuries received in line of duty, that such incapacity was likely to be permanent, and that he ought to be retired. The Board of Trustees approved this application October 19, 1973. D has been receiving Workman's Compensation payments provided through his employer, the participating local district, and it appears that there may be a lump sum settlement of such Workman's Compensation payments.

You ask whether or not any of these Workman's Compensation payments may be off-set against the disability retirement allowance payments. The answer to that question is negative.

On August 11, 1972, this office rendered an opinion to you that 5 M.R.S.A. § 1122, sub-§ 5 did not apply to Workman's Compensation provided by a participating local district. Subsection 5 was thereafter amended, effective October 3, 1973, making the requirement to offset Workman's Compensation payments (including lump sum settlements, per our November 20, 1973, opinion) applicable to such payments provided by participating local districts. This amendment is prospective in its operation. D's entitlement to this occupational disability retirement allowance became effective on the date he submitted his application to the Board of Trustees (August 27, 1973) with proof of such disability. He was then entitled to the benefits provided by law for such disability and there was then no requirement to offset Workman's Compensation payments from such a disability retirement allowance. Since the amended statute does not have retroactive effect, the new off-setting requirement is inapplicable.


CHARLES R. LAROUCHE
Assistant Attorney General

CRL/ec

NOT A FINAL OPINION