

MAINE STATE LEGISLATURE

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March 13, 1974

W. G. Blodgett, Executive Director

Maine State Retirement System

Charles R. Larouche, Assistant

Attorney General

(1) Post-death purchase of former membership creditable service; (2) Beneficiary eligibility of children intended to be but not adopted prior to member's death.

This replies to your memo of March 7, 1974, re the above subject.

1. It appears that E had three years of membership service, terminated his employment and withdrew his contributions. Subsequently, he was reemployed and acquired 9 years and 4 months of membership service under his reemployment and prior to his death. E did not make any deposit for his withdrawn contributions for the first period of service. You ask whether or not E's widow can now make a sufficient deposit for the withdrawn contributions to enable the deceased member to receive an entitlement to a 10 year creditable membership service. The answer to that question is negative.

5 M.R.S.A. § 1094, subsection 10, provides:

"Any former member who withdrew his contributions after termination of service may, upon later restoration to membership and prior to the date any retirement allowance becomes effective for him, deposit in the Members' Contribution Fund by a single payment or by an increased rate of contribution an amount equal to the accumulated contributions withdrawn by him together with regular interest thereon from the date of withdrawal to the date the deposit payment or payments are made. Upon the completion of such deposit the member shall be entitled to all creditable service that he acquired during his previous membership. In the event any retirement allowance becomes effective before the completion of such deposit, the member shall be entitled to credit for that portion of the total of such previous creditable service which the total amount of deposit payments actually made bears to such single deposit if paid on the date of restoration to membership, in each instance including regular interest from the date of payment to the date the retirement allowance becomes effective."

It appears from subsection 10 that the return of withdrawn contributions must be made by the "member"; death terminates that status, and this section does not authorize anyone other than the "member" to make the return of contributions. Nothing in 5 M.R.S.A. § 1124 grants any option to a beneficiary to make a return of contributions and thereby to increase the deceased member's entitlement to creditable membership service.

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Furthermore, the option in 5 M.R.S.A. § 1094, subsection 10, to return contributions must be exercised prior to the effective date of a retirement allowance. Such a limitation would seem to negate any possible implication that a beneficiary or would-be beneficiary could make the return of contributions; entitlement to survivor benefits occurs upon member's death.

II. It further appears that E's widow is the mother of two children by a former marriage. You say that E intended to adopt these two children but that he did not do so prior to his death. You ask whether or not these children can be deemed to be "The unmarried child or children under 18 years" of the deceased member, within the meaning of 5 M.R.S.A. § 1124, subsection 1B(1)(C). The answer to that question is also negative.

5 M.R.S.A. § 1001, subsection 6, provides, in pertinent part:

"'Child' or 'children' shall mean any unmarried natural, born or unborn, or legally adopted progeny of the member, under 18 years of age, or adjudged mentally incompetent by a probate court of the State of Maine, or certified by the Medical Board of the Maine State Retirement System to be physically and permanently incapacitated."

This provides for (1) natural children, and (2) legally adopted children. Your statement of facts makes it clear that they are not the deceased member's "natural" children. It also appears that he did not legally adopt the children. Children that a member may have "intended" to adopt, but did not do so, are not included in the meaning of "child or children" as used in 5 M.R.S.A. § 1124, subsection 1B(1)(C).

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AN INFORMAL OPINION