

# 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)

**This document is from the files of the Office of  
the Maine Attorney General as transferred to  
the Maine State Law and Legislative Reference  
Library on January 19, 2022**

May 7, 1974

W. G. Blodgett, Executive Director

Maine State Retirement System

Charles R. Larouche, Assistant

Attorney General

Differing Retirement Plans in a Participating Local District

This replies to your memo of April 3, 1974, as amplified by your April 18, 1974, memo, on this subject.

It appears from your April 3 memo that some participating local districts desire to provide different retirement plans for the various departments in the District, e.g., one plan for public works, and another for Health and Welfare, etc. It appears from your April 18 memo that one District has offered a plan to be applied to all its departments, except the non-"teacher" employees of its Education Department.

I understand your first question to be whether or not Chapter 101, Title 5 authorizes a participating local district to select different retirement plans for its various employee groups, other than firemen, policemen, sheriffs and full time deputy sheriffs. The answer to that question is negative.

5 M.R.S.A. § 1092, subsection 1 authorizes the district governing body to determine whether or not its employees will participate in the Maine State Retirement System and the extent of the benefits which shall apply to its employees. It also allows that body to designate any class of employees which may be exempted from participation, because they have previously been otherwise provided for by local pension provisions.

5 M.R.S.A. § 1092, subsection 5 makes participation in the System optional by employees in the service of the District on the date when the District joins the system; employees entering the service of the District thereafter are compelled to participate in the System, except those in the class previously exempted.

5 M.R.S.A. § 1121, subsections 1A and B and 2A provide the general plan for retirement of members of the System. Various exemptions to this general plan are created for specific categories of employees: State Police (§ 1121, subsection 1C); law enforcement officers of the Department of Inland Fisheries and Game and of Sea and Shore Fisheries (§ 1121, subsection 1D); forest ranger (§ 1121, subsection 1E); liquor inspector (§ 1121, subsection 4D); warden, guards and managers of prisoners (§ 1121, subsection 4F); certain teachers (§ 1121, subsection 5); firefighters (§ 1121, subsection 8); police officers (§ 1121, subsection 9); former Governors and widows of Governors (§ 1121, subsection 10).

AN INFORMAL OPINION

May 7, 1974

5 M.R.S.A. § 1092, subsection 2 through 4 authorizes a participating district to select three other plans. The alternative plans provided for in 5 M.R.S.A. § 1092, subsections 2 (also provided for in 5 M.R.S.A. § 1121, subsection 6) and 4, are applicable generally to employees of the District. The plan in 5 M.R.S.A. § 1092, subsection 3, until its amendment in 1965, could be applied only to policemen and firemen; thereafter, it could also be applied to sheriffs and full time deputy sheriffs. However, in 1969, the plan in § 1092, subsection 3 was further broadened to include "any other participating local district employees."

It is clear that the District can include all of its employees under the § 1092, subsection 3 plan.

The District could also apply this plan to its policemen, firemen, sheriffs and full time deputy sheriffs, and exclude all of its other employees from this plan. However, the Legislature has made no further classifications of employees who may be accorded favored treatment and it has not authorized, with appropriate standards, the District to make such further classifications for the purpose of granting favored treatment.

Accordingly, it must be concluded that while a District can treat policemen, firemen, sheriffs and full time deputy sheriffs differently from the rest of its employees, it cannot make any distinction in the retirement plans applicable to the various other groups of the remainder of its employees. Stated otherwise, all of the District's "other employees" must be treated alike with respect to the retirement plan under the Maine State Retirement System.

Your second question reads:

"Could the Trustees of the Maine State Retirement System restrict the acceptance of a cities retirement plan (except for firemen and policemen) to a uniform plan for all departments?"

This question is rendered moot by the answer to the first question.

---

CHARLES R. LAROCHE  
Assistant Attorney General

CRL:mfe

AN INFORMAL OPINION