

MAINE STATE LEGISLATURE

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November 18, 1974

W. G. Blodgett, Executive Director

Maine State Retirement System

Charles R. Larouche, Assistant

Attorney General

Disabled Retired Persons Eligibility to Elect Option at Age 60 Under the Provisions of 5 M.R.S.A. Section 1122, subsection 1, paragraph C

This replies to your November 13, 1974, memo concerning the subject.

It appears that a person is drawing an ordinary disability retirement. It further appears that upon attainment of age 60 he will be entitled to a recomputation of benefits under § 1122 and that he is then to be paid the amount which is greater, i.e., the disability retirement allowance or the service retirement under § 1121.

You ask whether or not such person would be entitled at that time to make an election of options under § 1126, if the recomputation results in granting him the greater benefit under § 1121. The answer to that question is affirmative.

Section 1122, sub-§ 1C provides that if upon the computation at age 60,

"the amount of service retirement allowance is greater than that being paid as the ordinary disability retirement allowance, the recipient shall no longer be considered as receiving a disability retirement allowance."

It is clear from that provision that the intent of § 1122, sub-§ 1C is to terminate the disability retirement allowance and to initiate the service retirement allowance at age 60 in the event that the recipient will attain a greater benefit under the service retirement provisions. Therefore, since he then becomes a retiree under § 1121, he is entitled to then make an election as to which of the four options under § 1126 he desires to be made effective.

If I can be of any further aid to you in this matter, please advise me.

CHARLES R. LAROCHE
Assistant Attorney General

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