

# MAINE STATE LEGISLATURE

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April 8, 1975

W. G. Blodgett, Executive Director

Maine State Retirement System

Charles R. Larouche, Assistant

Attorney General

Retirement System benefits; meaning of "Effective election" under 5 M.R.S.A. § 1124, subsection 3.

This replies to your memo of March 3, 1975, concerning the subject.

It appears that, in several instances, a member of the System has terminated employment with a request that his retirement allowance commence forthwith, stating in his application that he elects option 3; before the expiration of 30 days thereafter and prior to receipt of first payment, that person died having designated as beneficiary a spouse, child or children, mother or father.

You ask whether or not the designated beneficiary may be allowed to make an election of benefits under § 1124, subsections 1 and 2, pursuant to § 1124, subsection 3. The answer to that question is affirmative.

Section 1124, subsection 3, provides:

"Election of designated beneficiary. Should a member die at any time after attaining eligibility for retirement under any of the provisions of this chapter, but before any election in accordance with section 1126 becomes effective, the designated beneficiary if a spouse, child or children, mother or father may elect to receive either the benefits provided under subsection 1 or those provided under subsection 2, paragraph A or B but not both, provided that the member and the designated beneficiary must comply with each condition set forth in the subsection providing the benefits which are elected by the designated beneficiary."

Section 1126 provides:

"All retirement allowances shall be payable for life in equal monthly installments including any fraction of a month up to the date of death. Upon attainment of eligibility for retirement the member may at any time within 30 days from the date he elects to make his benefits

effective, if the written application is in the possession of the board of trustees on or before said effective date, or, at any time within 30 days of the actual receipt by the board of trustees of the written request for benefits, change his selection of option to retirement allowance, from retirement allowance to an option or from one of the options to another. After 30 days have expired from the applicable effective date, or after the first payment has been made, whichever is earlier, there may be no change in the selection."

Section 1124, subsection 2 provides:

"Death after eligibility for retirement. Should a member die any time after attaining eligibility for retirement under any of the provisions of this chapter but before any election in accordance with section 1126 becomes effective, the following benefits shall be payable: . . ."

It is apparent that the designated beneficiary is entitled to make his own election of benefits available under subsections 1 and 2 of § 1124 if, as explicitly provided in § 1124, subsections 2 and 3, the member died "before any election in accordance with section 1126 becomes effective." The controlling question, therefore, is when does an "election become effective" under § 1126? The last sentence in § 1126 provides the answer to that question:

"After 30 days have expired from the applicable effective date, or after the first payment has been made, whichever is earlier, there may be no change in the selection."

Thus, it appears that the member can change his election of benefits at any time prior to the expiration of the 30 day period and prior to receipt of first payment; thereafter, he cannot change his selection of benefits. Accordingly, upon the occurrence of either of those events, i.e., the expiration of the 30 day period or the receipt of first payment, the member's election under § 1126 becomes "effective," in that it is no longer subject to change.

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This did not occur in the fact situation you have presented, and, therefore, the member's election did not become effective within the meaning of § 1124, subsections 2 and 3. Accordingly, the designated beneficiary is entitled to make his own election of benefits.

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CHARLES R. LAROCHE  
Assistant Attorney General

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