

# MAINE STATE LEGISLATURE

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September 10, 1975

W. E. Blodgett, Ex. Director

Maine State Retirement System

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Interest entitlement on refund of members contributions

SYLLABUS:

The provisions of 5 M.R.S.A. § 1096 prohibit payment of interest beyond the 5th anniversary of the date of termination of members of the Maine State Retirement System with less than 10 years of creditable service, except that all interest earned on contributions to the Maine State Retirement System prior to August 20, 1955 shall be paid without regard to the fifth anniversary limitation.

FACTS:

In November, 1974 a person who had ceased contributions to the Maine State Retirement System in 1948 requested a refund of the balance of her contribution and interest. That person had received statements from the Maine State Retirement System through June 30, 1971 indicating she was being credited with interest on the balance of her contribution through June 30, 1971.

QUESTION:

(1) Is this former contributor to the Maine State Retirement System entitled to interest beyond the 5 years after her termination of service?

(2) Does the Maine State Retirement System have an obligation to advise members who have terminated that after the end of their fifth year, no interest will be credited to their account?

ANSWER:

(1) The person in question is entitled to interest for 5 years after her termination and additionally until August 20, 1955, the effective date of P.L. 1955 Chapter 417, § 11.

(2) The Maine State Retirement System has no statutory obligation to advise members who have terminated that after the end of their 5th year no interest will be credited to their account. However, it may be helpful to advise persons leaving state service of this provision of law to avoid hard feelings and actual losses later.

DISCUSSION:

Prior to the effective date of P.L. 1955 Chapter 417, August 20, 1955, interest was paid on all contributions of former members without regard to their length of service and without regard to the amount of time which they had been separated from creditable service. Thus, all interest paid prior to that date became vested in the accounts of the individual members of the retirement system. In the case of the teacher in question, who retired in 1948, her right to receive interest accrued through August 20, 1955. The effectiveness, on that date, of a statute specifying that interest would be credited only through the first 5 years after separation from service of a person with less than 10 years service did not terminate those prior interest rights, as they had become vested in the individual contributors.

Your memorandum also indicates that for a period almost 16 years after the effective date of the 5 year limitation, statements sent to this particular individual continued to indicate that she was being credited with interest on the balance of her account. If this matter involved private industry, the long time improperly crediting interest might give rise to a claim for recovery. However, the state stands in a different position than private industry in this regard. From the date of enactment of Chapter 417, all persons including the person in question here are presumed to be on notice as to its provisions. In addition, actual payment of sums beyond that authorization by the statute (in this case payment of interest for not to exceed 5 years beyond separation) would be a violation of law (5 M.R.S.A. § 1583) as no state expenditures can be made except as authorized by appropriation.

The sovereign immunity doctrine would preclude recovery of the unauthorized interest in a court action, as would the doctrine that, absent a statute, acts or omissions of state officials cannot waive rights or act as estoppel against the state. A.H. Benoit & Co. v. Johnson, 160 Me. 201 (1964), and the many cases cited therein; Rye Beach Village Dist. v. Beaudoin, 315 A.2d 181 (N.H. 1974), Maynard v. Administrator, Unemployment Compensation Act, 294 A.2d 78 (Conn. 1972). But see Roussel v. State, Me. 274 A.2d 909, 926 (1971)

Thus the employee in question is eligible for interest only through August 20, 1955.

As indicated above, people are presumed to be on notice of provisions of law. Thus there is no legal obligation to advise members who have terminated that at the end of their fifth year no further interest will be credited to their account if they do not have 10 years creditable service. However, you may wish to provide such advice, although it is not statutorily required, to avoid any misunderstanding by persons who may not be actually aware of this particular provision of law.

DGA/mf

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