

# MAINE STATE LEGISLATURE

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October 1, 1975

Philip R. Gingrow, Asst. Ex. Director

Retirement System

Donald G. Alexander, Assistant

Attorney General

Transfer of Retirement Credits from One Employer to Another

Your memorandum of September 9, 1975 raises several questions as to the meaning of P.L. 1975 chap. 622 § 26 amending 5 M.R.S.A. § 1092-11. The effect of this amendment is to change the previous law which required new employers to assume full financial responsibility for the level of benefits which had been provided for the member by a previous employer, even if the new employer did not grant that level of benefits. Under § 26, the new employer is now not required to provide contributions for a new employee who has previously a member of the Retirement System which exceed the level of contributions generally provided by that new employer. The benefits accruing to the employee become those benefits and levels of creditable service which are based on the contributions of the new employer, unless the new employer elects to adopt the old and higher level of benefits previously provided to the employee.

You then ask: "May we require that each participating district make an election regarding this matter which would be applicable to all future employees who had previously earned creditable service, based upon employment with another employer?"

The Board has authority to make rules and regulations, 5 M.R.S.A. § 1031-5. However, the intent of the statute here appears to be that some discretion should be left with the participating district. The state or any other participating district may establish a policy, one way or the other, if it so desires. However, it does not appear to be within the authority of the Board of Trustees to adopt a regulation saying that once that policy is adopted it must be adhered to without change. It would be within the authority of the Board of Trustees to adopt a regulation requiring that participating districts adopt a policy. That regulation should have sufficient flexibility to permit participating districts to change that policy as they deemed appropriate.

As to your question as to whether the Board of Trustees of the Retirement System should make such an election regarding state employees and public school teachers it would appear that it is within the authority of the Board to make such an election if they so desire.

DGA/mf

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Donald G. Alexander