

MAINE STATE LEGISLATURE

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December 15, 1975

William G. Blodgett, Exec. Director

Maine State Retirement System

Donald G. Alexander, Assistant

Attorney General

Status of Participating District Requesting Withdrawal from the
Maine State Retirement System

Your memorandum of October 20, 1975, requests direction as to the proper disposition of funds of a participating district which, at the present time, has no members and wishes to be closed out so far as the Maine State Retirement System is concerned.

Specifically your memorandum posed two questions:

1. May a participating district exit from the system by its own action if it still exists as an entity?

In the situation posed in this case involving a participating district with no employees, the participating district may be allowed to exit from the Retirement System. There would appear to be two situations involving a participating district wishing to terminate participation in the Retirement System. First, an existing employing unit which is a member of the System may reach a conscious determination, through its proper executive body, to terminate participation. Whether such termination can occur, and, if it can occur, how it would occur is not addressed in this opinion. In the second situation, a participating district may cease to be an employing unit and thus cease to have a basis for participation in the Retirement System. That is the case with the Auburn Urban Renewal Authority. They presently employ no persons, and, as they are no longer an employing unit, their participation in the Retirement System may, de facto, cease if the vested rights of the unit's former employees in their contributions to the Retirement System are protected. The Maine State Retirement System may accept the withdrawal of such a unit which has ceased to be an employing unit by receiving a resolution from the governing body of that employing unit indicating that it has ceased to be an employing unit and wishes to terminate its relationship with the Maine State Retirement System. Thus, the answer to the first question you pose is affirmative, in the context of this fact situation, though the broader question is not addressed.

2. If the answer to the above is in the affirmative, and the trustees vote to exit from the system, what disposition should be made of funds held to the participating district's credit in the System?

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As a statute governing this case is about to become effective, it is recommended that application to withdraw from the System and processing that application be deferred until the effective date of 5 M.R.S.A. § 1092-14, which is January 1, 1976. That statute specifies how funds from districts which cease to be employing units may be distributed.

If the funds can be distributed under sub-§ 14, that should be done. The most equitable allocation of funds to the former employees may be to treat the funds coming from the Auburn Urban Renewal Authority as additional contributions pursuant to 5 M.R.S.A. § 1062-2-C. If complications still arise because the district's liability to its former employees is entirely covered by the System, or if, for some other reason the proposed solution is not entirely satisfactory, please contact me again and I will pursue the matter further.

Note: You indicated that there was a letter from the Auburn Renewal Authority attached. No such letter was received with the request for opinion.

DONALD G. ALEXANDER
Assistant Attorney General

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