

MAINE STATE LEGISLATURE

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January 19, 1976

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Maine State Retirement System

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Attorney General

Creditable service under the Maine State Retirement System for members receiving Workmen's Compensation

Your memorandum of November 21, 1975 poses several questions regarding creditable service to members who are not on a regular payroll of a participating local district but who are drawing workmen's compensation. In answering these questions we are assuming that the workmen's compensation situations discussed in the request are situations arising from temporary disabilities and that the permanent disability provisions of 5 M.R.S.A. §§ 1122 and 1123 do not come into play. Thus this opinion only applies to members who may be on workmen's compensation on a temporary basis but who are not eligible to be retired under the disability provisions.

Question 1: Should creditable service of compensation? Yes, if contributions continue

See corrected opinion

is drawing workmen's status as an employee.

The compensation provisions of the workmen's compensation act and particularly §§ 54, 55 and 56 thereof are intended to allow a worker's compensation status be retained as much as possible. It would be inconsistent with the intent of this act to allow creditable service toward retirement during the period of injury. It is inconsistent with the intent of this chapter to hold that injured workers lose creditable service toward retirement during the period of their injury. Further, the retirement law, 5 M.R.S.A. § 1094 does not require that a person be actually working but only that he be receiving compensation in order to render that person eligible for creditable service. Thus, § 1094-1 states:

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Title 39, Chapter 1, § 1094-1 states that an injured worker's status as an employee is retained during the period of his injury. It is inconsistent with the intent of this chapter to hold that injured workers lose creditable service toward retirement during the period of their injury. It is inconsistent with the intent of this chapter to hold that injured workers lose creditable service toward retirement during the period of their injury. Further, the retirement law, 5 M.R.S.A. § 1094 does not require that a person be actually working but only that he be receiving compensation in order to render that person eligible for creditable service. Thus, § 1094-1 states:

"Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of his membership service, and, if he has a prior service certificate which is in full force and effect, the period of service certified on his prior certificate."

Membership service is then defined in § 1094-2 as:

"All service of a member on account of which contributions are made shall be credited as membership service and none other."

Thus if contributions are made during a period when a worker cannot work and is receiving workmen's compensation, this is appropriately determined membership service, and pursuant to sub-§2, it may become creditable service pursuant to sub-§1, as this constitutes service with compensation, it is not service without pay under § 1094-4. However, the person involved must retain status as an employee of the participating local district. If such status is terminated no further service can be credited.

Question 2: If the answer to the above is in the affirmative, should the member be required to make contributions on the amount of workmen's compensation that is being paid to him? In order for the member to receive service credits, contributions must be made from the employee or some other source. Who should pay the contributions during the period of a member's injury is not a question for the retirement system to resolve, it is a question between the employee, employer and the insurer.

DGA:jg