

MAINE STATE LEGISLATURE

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January 23, 1976

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Maine State Retirement System

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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 continue for a person who is drawing workmen's compensation? Yes, if contributions continue and the person retains status as an employee.

The compensation provisions of the workmen's compensation law, Title 39, Chapter 1, and particularly §§ 54, 55 and 56 thereof, are designed to assure that an injured worker's compensation status be retained as much as possible during the period of his injury. It would be 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.

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