

MAINE STATE LEGISLATURE

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5 M.R.S.A. § 1094 - 10
~~Retirement Benefits~~

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April 30, 1976

W. G. Blodgett, Executive Director

Maine State Retirement System

Donald G. Alexander, Deputy

Attorney General

Application of 5 M.R.S.A. § 1092 sub-§ 11 and § 1094 sub-§ 10

Your memorandum of April 14, 1976, poses two questions:

(1) Does 5 M.R.S.A. § 1092 sub-§ 11 apply only to those individuals who are re-employed with a new employer?

The answer is yes. Sub-§ 11 only applies to the appropriate method for granting credits and determining benefits in situations involving a termination of employment with one employer and a transfer to a new employer.

(2) Are the provisions of § 1094 sub-§ 10 which relate to withdrawal of contributions and deposit of withdrawn contributions plus interest on re-employment applicable to individuals who withdrew their contributions and are re-employed by the same employer? Sub-section 10 of § 1094 clearly contemplates its application to situations where individuals withdraw their contributions and are subsequently re-employed by the same employer, it is primarily written with state employees in mind.

The question raised by both of the above questions, however, appears to be whether § 1092 sub-§ 11 is the exclusive method for dealing with the matter of withdrawn contributions in the case of transfers from one employer to another, or whether the provisions of § 1094 sub-§ 10 could also apply to situations involving transfers from one employer to another. In this connection you indicate that it has been the position of the Maine State Retirement System that a member could not pay for contributions which were refunded from one district in order to obtain credit in a second participating district.

The opinion of February 18, 1975, addressed the question of whether there was any discretion in a local district to refuse to allow employees of a district to obtain credit for former service with that same district by refusing to accept the tender of back contributions. We answered that question in the negative. The question here would appear to be whether an employee transferring from one district to another, after withdrawing contributions from the first, can deposit those contributions and appropriate interest and obtain credits for back service. We believe that such credits may be given if contributions for back service are made and that the past practice of the Maine State Retirement System which you indicate has, under the statutes now in effect, been in error.

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Section 1094 sub-§ 10 speaks of membership in the Maine State Retirement System but contains no implication that it is limited in application to a member who remains with one employer. Further, interpreting this section to allow contribution of withdrawn credits to gain credit for prior service with another participating local district is, in no way, inconsistent with the provisions of § 1092 sub-§ 11. That section provides the conditions for transfer of credits. One of those conditions relates to the situation where there has been no withdrawal of contributions and indicates that credits be transferred. Another condition is that there be no additional contributions by the municipality, unless it is willing to accept it, as a result of the transfer of prior credit. This provision does not prohibit subsequent contributions to give a member prior service credits as long as the requirement that the cost to the municipality not be increased, is met.

This interpretation is consistent with the general doctrine of statutory interpretation that all provisions of a statute should be read together and assumed to be consistent if possible. Further, it is based on the belief that in general statutes, such as the statute applying to the Maine State Retirement System, exceptions will not be presumed unless expressly stated. No exception to govern the case at issue here is expressly stated either in sub-§ 10 of § 1094, or directly, or by implication in sub-§ 11 of § 1092.

DONALD G. ALEXANDER
Deputy Attorney General

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