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Inter-Departmental Memorandum Date June 25, 1976

To W. G. Blodgett, Executive DirectorDept. Maine State Retirement SystemFrom Donald G. Alexander, DeputyDept. Attorney GeneralSubject Comparison of Opinions of April 30, 1975, and April 7, 1972,
interpreting 5 M.R.S.A. Sections 1092-11 and 1094-10

By memorandum of May 12, 1976, you requested this office to review its opinion of April 30, 1976, in light of the opinion of April 7, 1972. You express concern that the opinion of April 30, 1976, reverses the past practice of the Retirement System denying individuals credit for past service with a different employer unless the new employer agrees to fund the cost.

Initially it must be emphasized that the April 30, 1976, opinion does not go this far. That opinion indicates that credits for service with a prior and different local district employer may be given if contributions for the back service are made. However, the opinion also notes that application of this provision is conditional on the restrictions in section 1092-11. Specifically, the opinion noted that: "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."

Increased liability as the result of contributions to revitalize prior credits cannot be imposed on a municipality. This is quite clear from the provisions of section 1092, sub-§11. The credits for back service for which contributions have been withdrawn may only be granted where the new employer agrees to assume the increased costs which would be incident to acceptance of such prior service credits. These costs cannot be unilaterally imposed on the municipality by decision of the member alone making the necessary contribution.

With this qualification, however, we believe that the April 30, 1976, opinion prevails over the opinion of April 7, 1972, specifically in where it states that an employee with prior service credits in another district may withdraw contributions and subsequently, upon rejoining the Maine State Retirement System as employee of a participating local district, buy back those prior credits. However, this buy back can only occur with the agreement of the new employer to voluntarily make the necessary increased district share of the contributions.

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Deputy Attorney General

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