

MAINE STATE LEGISLATURE

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5 M.R.S.A. § 1096

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STATE OF MAINE

Inter-Departmental Memorandum Date August 27, 1976

To William G. Blodgett, Executive Director

Dept. Maine State Retirement System

From Donald G. Alexander, Deputy

Dept. Attorney General

Subject Refund Request of Teacher whose Discharge is Currently in Litigation

This responds to your memorandum of August 16, 1976, on the above-captioned subject.

FACTS:

A teacher who has been discharged from service with a school system and is appealing that discharge in the courts is seeking to withdraw contributions from the Maine State Retirement System pursuant to the provisions of 5 M.R.S.A. § 1096.

QUESTIONS:

Is a member who has been discharged by his employer but who is currently appealing discharge in the courts entitled to a return of contributions upon filing a request for a return of such contributions?

The answer is no.

DISCUSSION:

5 M.R.S.A. § 1096 provides that members are entitled to a return of contributions: "If the service of any member has terminated." In this case, the service of the member has been terminated by his employing local district. However, the member has appealed that termination to the courts, and that appeal is still pending. Thus, certainly the member does not consider that his termination is final, although his filing a form seeking withdrawal of contributions might be construed as conceding that he has been terminated. Accordingly, it would not be appropriate for the Maine State Retirement System to return the member's contribution until the member's termination, currently under appeal, is finally confirmed by court decision. Should that termination not be confirmed, then return of contributions would be entirely inappropriate.

DONALD G. ALEXANDER
Deputy Attorney General

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