

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date December 2, 1976

To W. G. Blodgett, Executive Director Dept. Maine State Retirement System


From Donald G. Alexander, Deputy Dept. Attorney General

Subject Clarification of Opinion of August 27, 1976, Relating to Refund Requests
of a Teacher whose Discharge is Currently in Litigation

By memorandum of August 16, 1976, you posed the question: "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?"

At that time we answered in the negative based on interpretation of 5 M.R.S.A. § 1096 and its provisions relating to termination. Subsequent to that time, we have reviewed that opinion in light of the prior practice of the Retirement System, particularly as discussed in the decision of the Maine Supreme Judicial Court in State Development Office v. State Employees Appeals Board, 363 A.2d 688, 691 (Me., 1976). That decision, dated September 16, 1976, indicates that it has been the practice of the Retirement Board to grant retirement and thus apparently assume discharge or termination of an employee even where such discharge or termination of an employee is in litigation. That being the case, we believe that the question of refunds of retirement funds or commencement of retirement is not absolutely covered by statute in the manner suggested in the opinion of August 27, 1976.

Accordingly, it may be appropriate for the Maine State Retirement System to develop regulations on this matter or to seek clarification by legislation to assure that all cases of discharge or termination which are subject to litigation are treated alike. Pending such regulation or legislation, we believe that an employee who is considered terminated by an employer but who is litigating such termination may receive a return of his contributions or may be placed in retirement status and begin receiving appropriate retirement pay in accordance with current practice as recognized in the above-cited decision.



DONALD G. ALEXANDER
Deputy Attorney General

DGA:mfe

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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