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7 5 M.R.S.A. 1120
Cost of Living
Retirement Effective Date for
Cost of Living Adjustment

STATE OF MAINE

Inter-Departmental Memorandum Date December 22, 1976

To P. R. Gingrow

Dept. Maine State Retirement System

From Donald G. Alexander, Deputy

Dept. Attorney General

Subject Effective Date of Cost of Living Plan for Participating Local Districts

This responds to your memorandum of November 30, 1976, in which you pose certain questions regarding application of 1976 cost-of-living increases to a retiree or retirees of a participating local district, which has voted to include in its retirement plan the provisions of 5 M.R.S.A. § 1128 effective January 1, 1977.

FACTS:

A participating local district, in this case Lincoln County, has voted to include in its plan the provisions of 5 M.R.S.A. § 1128 effective January 1, 1977. An elected official of that local district, the Judge of Probate, whose term expires on December 31, 1976, plans to retire as of that date. Additionally, the local elected official has advised the office that it may be possible either for Lincoln County to shift its effective date for assumption of the provisions of 5 M.R.S.A. § 1128 to December 31, 1976, or that it may be possible for the official in question to delay retirement until some date on or after January 1, 1977.

QUESTION:

Based on the above facts, would the retiring Judge of Probate be eligible for cost-of-living increases which took effect in the twelve months immediately preceding his retirement?

ANSWER:

No.

DISCUSSION:

The fifth paragraph of 5 M.R.S.A. § 1128 provides as follows:

"The service retirement allowance of a member who retires under sections 1092 or 1121, within 12 months of the effective date of a retirement allowance adjustment, shall not be less than the service retirement allowance, including such retirement allowance adjustment, that would have been payable if the member had

retired on the day immediately preceding the date of such adjustment. This provision shall apply only if the member is eligible under sections 1092 or 1121 to retire on the day immediately preceding the effective date of such retirement allowance adjustment."

In addition to providing a 12-month relation back from the date of retirement which assures a particular retiree of the benefits of any cost-of-living adjustment granted within that time, this paragraph also imposes two other criteria to grant persons eligibility:

1. That the person in question was eligible to retire at the time of the cost-of-living adjustment. For the purposes of this opinion, we will assume that the cost-of-living adjustment took effect November 1, 1976, as provided by P. & S.L. 1975, c. 147, Part D, and that the Judge of Probate would have been eligible to retire on that date. Therefore this criteria would be met.

2. That the service retirement allowance, if the employee in question had retired on the date immediately preceding the cost-of-living adjustment would have included the cost-of-living adjustment. As the local district in question was not participating in the provisions of 5 M.R.S.A. § 1128 at the time at which the cost-of-living adjustment applied to local employees, November 1, 1976, the employee in question would not be eligible for the cost-of-living adjustment if he retires on December 31, 1976, or January 1, 1977, and the local district includes in its plan the provisions of 5 M.R.S.A. § 1128 effective December 31, 1976, or January 1, 1977. For this provision to have been effective, the local district would have had to assume the provisions of 5 M.R.S.A. § 1128 as of October 31, 1976. The only retirement adjustments which employees of a local district assuming the provisions of 5 M.R.S.A. § 1128 may benefit from are those retirement allowance adjustments which take effect on or after the date upon which the local district assumes the provisions of 5 M.R.S.A. § 1128.

DONALD G. ALEXANDER
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