

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date January 19, 1977

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

From Donald G. Alexander, Deputy Dept. Attorney General

Subject Application of Interest Penalty under 5 M.R.S.A. § 1094-10

This responds to your memorandum of January 11, 1977, in which you request advice on the question of whether a member who left State employment, withdrew his contributions, and then re-joined State employment prior to January 1, 1976, but did not begin repayment of withdrawn contributions until after January 1, 1976, must pay the 2 percent interest penalty on the withdrawn contributions. 5 M.R.S.A. § 1094-10.

Specifically, the facts are these:

Mr. Robert Vickery left State employment in 1957 and took a refund of his contributions and interest. Subsequently Mr. Vickery rejoined State employment.

In June of 1974 Mr. Vickery was advised that the cost to pay for the amounts refunded together with applicable interest amounted to \$1,310.41, if paid before June 30, 1974. On July 31, 1975, Mr. Vickery was advised that in order to pay back contributions for the amount refunded in 1957, the cost was \$1,417.34 if paid before June 30, 1976, however, a note was added to the letter advising Mr. Vickery that, "In order to avoid the additional 2% interest penalty, as passed by the 107th Legislature, payments should begin prior to January 1, 1976 on any amounts due." In April of 1976 Mr. Vickery made payments of \$800 and \$400 to apply on back contributions. Also, in April of 1976, following these payments, Maine State Retirement System advised the Bureau of Taxation payroll clerk that Mr. Vickery desired to make an additional 3% per week contribution to pay on back contributions and noted that the amount owed, if paid before June 30, 1976, was \$217.34. On June 28, 1976, Maine State Retirement System notified Mr. Vickery that there had been an error in computing the balance of his contributions due (as noted in the April 26, 1976 memo to the Bureau of Taxation), and that the interest based on the statute effective January 1, 1976, had not been taken into consideration, and that rather than owing \$217.34, the amount due was \$840.28 if paid by July 1, 1976. Mr. Vickery advises that he received this notice on July 1, 1976.

Based on the above fact situation, it is the opinion of this office that the person in question must pay the 2 percent interest penalty, as the payments of withdrawn contributions did not begin until after January 1, 1976. This extra time for the

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2 percent penalty provision to take effect may be presumed to have been intended as a period of notice for persons to begin repayment of withdrawn contributions (or initial payment of funds into the Maine State Retirement System where membership is discretionary). P.L. 1975, c. 622, § 66, ¶ 5. Based on this legislation, we would agree with your interpretation that the Legislature intended to have the 2 percent interest penalty to apply to persons who rejoined State employment prior to January 1, 1976, if repayment of previously withdrawn contributions was not commenced by January 1, 1976.

DONALD G. ALEXANDER
Deputy Attorney General

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