

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date March 8, 1977

Robert J. Stolt, Commissioner

Dept. Personnel

From Donald G. Alexander, Deputy

Dept. Attorney General

Subject 25 M.R.S.A. § 1591

This responds to your request, dated February 24, 1977, that we review the language of 25 M.R.S.A. § 1591 and our recent letter to Representative Stephen Gould dated February 16, 1977, regarding eligibility of certain State Police retirees for computation of retirement benefits based on the present pay of State Police personnel including both base pay and the nonstandard work week computation. Basically you ask whether the language of 25 M.R.S.A. § 1591 grants certain State Police retirees whose retirements are paid under § 1591 a fixed retirement income which was calculated to be 1/2 of the pay per year paid at the time of their retirement.

We do not believe that the language of 25 M.R.S.A. § 1591 fixes the retirement pay of those State Police personnel covered by § 1591 at the time of their retirement.

25 M.R.S.A. § 1591, the first sentence, reads as follows:

"Any member of the State Police may retire upon completion of 20 years creditable service, but must retire no later than July 1, 1974, and be placed upon the pension rolls and receive thereafter 1/2 of the pay per year that is paid to a member of his grade at the time of his retirement."

We construe the term "at the time of his retirement" as modifying the term "a member of his grade," rather than "pay per year." Therefore, retirement benefits depend upon the position held, rather than the pay received, at the time of retirement. Consequently, § 1591 does allow adjustment of retirees pay as the pay for equivalent active grades varies. The Legislature could have used simpler and more explicit language if it had intended to simply fix the rate of compensation of § 1591 retirees at 1/2 of their pay at retirement. Thus, they could have specified compensation at 1/2 of his pay per year at the time of retirement. The Legislature did not so specify, but rather, indicated a pay scale which referred to a current member. In this connection, we believe the term "is" in the sentence significant indicating reference to current pay rather than past pay.

Further, we would note that this interpretation, that the retirement pay of retirees under § 1591 changes according to the pay of current members of the State Police in equivalent positions, has been the consistent administrative interpretation of the State Police in

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paying retirement allowances for many years. The contemporaneous construction of an administrative agency in interpreting a statute is entitled to considerable weight in construing the statute, In Re O'Donnell's Express, 260 A.2d 539, 544 (Me., 1970); Mottram v. State, 323 A.2d 809 (Me., 1967). This is particularly so when the administrative construction has prevailed over a long period of time and has evoked no adverse legislative reaction, United States v. Grouppe, 459 F.2d 178, 181-182 (1st Cir., 1972).

This administrative interpretation has prevailed over a number of years and was addressed somewhat in opinions issued by this office nine years ago. Copies of those opinions, dated April 4, 1968, and November 1, 1968, are attached hereto for reference.

Accordingly, we have reconsidered the matter as you requested. However, we maintain the views stated in the letter to Representative Gould, and we reaffirm the position that the pay of State Police retirees who receive benefits pursuant to § 1591 should be adjusted according to the current pay of State Police members in positions equivalent to that of the retiree at the time of his retirement.



DONALD G. ALEXANDER
Deputy Attorney General

DGA:mfe

cc: Stephen R. Gould, Representative
George Davala, Public Safety