

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date June 6, 1977

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

From Kay Evans, Assistant Dept. Attorney General

Subject L.D. 1777: Proposed Constitutional Amendment Regarding Revenues

Your memo of May 31, 1977, asks for our opinion regarding the effect of L.D. 1777 on the Retirement System. This Bill proposes for referendum a constitutional amendment providing that all revenues received by the State, with specified exceptions, are to be credited to the General Fund, to be appropriated therefrom as prescribed by the Legislature. It is our opinion that the proposed amendment, if approved in referendum and subsequently adopted, would have no effect on the Retirement System's funds or functioning.

Opinion:

The proposed amendment reads:

Section 20. Revenues to be credited to General fund. All revenues received by the State from whatever source shall be credited to the General Fund and appropriated in a manner prescribed by the Legislature, except as provided in Article IX, Section 19; as the Legislature may provide with respect to dedication of revenues to the Department of Inland Fisheries and Wildlife; as the United States Government may provide with respect to any funds received by the State from the United States; and as any person, corporation or other entity may provide with respect to any gift, grant, bequest or devise to the State.

Retirement System monies are not "revenues received by the State." "Revenue," used as in L.D. 1777, is the State's income from taxes, fees, imposts, fines and penalties, etc. Fink v. Kemp, 283 S.W.2d 502, 513 (1955); City of Phoenix v. Arizona Sash Door and Glass Company, 293 P.2d 438, 440 (1956); Opinion of the Justices, 134 N.E.2d 892, 897 (1956); Public Market Company of Portland v. City of Portland, 130 P.2d 624 (1942). Further, the cases suggest that revenue "received by the State" is income from which the State pays its bills, funds its programs and in general provides for its own operations. L.D. 1777 itself implies as much in providing that "all revenues received by the State . . . shall be credited to the General Fund and appropriated in a manner prescribed by the Legislature."

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Under these definitions Retirement System monies, whether contributions from employees and employers or interest on investments, is not income received by the State. Retirement System monies do not constitute income simply because handled by a State agency. These monies are constitutionally protected from any use other than the provision of a benefit system, Maine Constitution, Article IX, Section 18, primarily directed to the needs of employee-members. The proposed amendment does not repeal the Section which provides this protection. Should the proposed amendment become a part of the Constitution, the two Sections would have to be read to give effect to both. The reasonable way to do that would be to read Section 18 to exclude Retirement System monies from the scope of the proposed amendment. We reiterate our opinion, however, that even if Article IX, Section 18 were not a part of the Maine Constitution, the proposed amendment would not affect the Retirement System because its monies are not "revenues received by the State."

Kay R. H. Evans

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