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Retirement Rights to Benefits where District Ceases to Exist
5 MRSAS 1092-14
5 MRSAS 1092-7
5 MRSAS 1092-9

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July 14, 1977

To: William G. Blodgett, Exec. Dir., Maine State Retirement System
From: Kay R. H. Evans, Assistant Attorney General

Re: Entitlement to M.S.R.S. Benefits for a Retired Participating District Employee in the Event the participating District Ceases to Exist

Your memo of March 15, 1977, asks for an opinion on several questions which have arisen from an inquiry by an employee of a participating local district. The employee has asked in effect, what would be the impact on his benefits if the participating local district "ceased to be an employing unit eligible for inclusion in the Retirement System." 5 M.R.S.A. § 1092, sub-§ 14. As you and Mr. Towne have noted, it is not entirely clear whether the employee is concerned with priorities for distribution of such local district funds as exist at cessation of the local district's participation (§ 1092, sub-§ 14) or with the liability, if any, of the Maine State Retirement System for payment of benefits in the event that the local district has insufficient funds on account with the Retirement System at the time it ceases participation to cover in full the spectrum of its liabilities to its retirees and employee-members (§ 1092, sub-§9). Probably the employee has concerns in both these areas, though he may not specifically articulate them. A reply to him might well address both questions. In any event, your memo specifically raises these two questions and a third, the interrelationship of sub-§§ 7, 9 and 14 of § 1092. Our response is as follows:

A. Your memo to Mr. Towne of February 1, 1977, lists priorities on distribution as laid out in § 1092, sub-§ 14. Though your list accords with the explicit statutory terms, paragraph 2 of sub-§ 14 appears to mean that continued payment of benefits to retirees receiving benefits at the time a local district ceases participation continues until reserves for that purpose then in the Retirement Allowance Fund and the Survivors Benefit Fund are exhausted. Only after such reserves have been exhausted do beneficiaries come within the provision of paragraph 2 whereby they are to receive the actuarial equivalent of benefits remaining unpaid.

Wm. G. Blodgett

July 14, 1977

Page 2

B. The Maine State Retirement System has certain limited liabilities to employee-members and beneficiaries of participating local districts. Essentially, the extent of that liability closely parallels the amount of reserves (the contributions of the local district and of its employees, plus interest) held by the System for the benefit of the local district's employee-members and beneficiaries.

C. Some aspects of the relationship of sub-§ 7, 9 and 14 to each other, and of participating local districts to the Retirement System, are necessarily discussed in the preceding parts of this reply. The final part offers a general discussion of that relationship, from the point of view that sub-§§ 7, 9 and 14 provide the mechanisms by which a local district attaches itself to, co-exists with and separates from the Retirement System. Clearly the underlying intent is that such should happen with little or no damage to the host System.

OPINION

A. Priorities on Distribution of Funds Established For Participating Local District on Cessation of the District's Participation in the Retirement System.

When a participating local district ceases to be eligible for inclusion in the Retirement System, the membership of its employees ceases

. . . except to the extent of any benefits that may be provided by the funds that have been established under the Retirement System for such district.
5 M.R.S.A. § 1092, sub-§ 14(A).

The funds are to be allocated to the local district's members and beneficiaries in an equitable manner as determined by the System's Trustees on the basis of particular criteria and in the order specified in the statute. § 1092, sub-§ 14, ¶¶ (B) and (C). The prescribed order is:

(1) For the benefit of members to the extent of the then value of their accumulated contributions in the Members' Contribution Fund: if any funds remain, then

(2) For the benefit of beneficiaries then receiving payment of a benefit after cessation of payments to such beneficiaries, in proportion to the then actuarial value of their respective benefits but not to exceed the amount of such values; if any funds remain, then

(3) For the benefit of members with at least 10 years of creditable service, who are not then receiving benefit payments, to the extent of the actuarial value of their retirement allowances not provided by their accumulated contributions; the allocation of the funds under this subparagraph shall be on the basis of the oldest ages first method; if any funds remain, then

(4) For the benefit of members in service with the district on the date of such cessation with less than 10 years of creditable service, who are not then receiving benefit payments, to the extent of the actuarial value of their retirement allowances not provided by their accumulated contributions; the allocation of the funds under this subparagraph shall be on the basis of the oldest ages first method.

Our interpretation of these provisions, section by section, is as follows:

1. Members whose contributions are then in the Members Contribution Fund receive back the amount of their contributions plus interest.

The source of funds for these payments are the employees' individual accounts in the Members Contribution Fund. After all members' accumulated contributions are returned, any funds remaining in the Members Contribution Fund are available for distribution to the succeeding categories of beneficiaries and members, in order of priority.

2. Beneficiaries then receiving benefits from either the Retirement Allowance or Survivors Benefit Fund continue to receive benefit payments until payment of such benefits ceases. Since local districts contribute to these Funds on an annual basis, as provided in § 1092(7) and (13), benefit payments to the extent of the district's current annual contribution then in the Retirement Allowance and Survivors Benefit Funds would be due beneficiaries. Under (D) of sub-§ 14, these benefits could be paid periodically or as a lump sum, as the Trustees decided. "(A)fter cessation of

Wm. G. Blodgett
July 14, 1977
Page 4

such (benefit) payments to beneficiaries," those beneficiaries are then to receive the actuarial equivalent of future benefits remaining unpaid. The meaning of "after cessation of payments" is not clear from paragraph 2 itself, but the above interpretation would seem to be the only way to obtain a fair distribution to then-recipient beneficiaries, who are not eligible under paragraph 1 for a return of contributions^{1/} Beneficiaries would otherwise, in effect, risk the loss of both of their contributions and interest thereon and of future benefits, simply because they had retired prior to cessation of participation by the local district. Employee-members who had not yet retired would risk only the loss of future benefits, since they would obtain return of their contributions with interest under paragraph 1. Such an unequally-borne risk would be unreasonable and discriminatory.

The sources of funds for the payment of the actuarial equivalent of unpaid future benefits would be money remaining in the Members Contribution Fund after compliance with (1), money left in the Retirement Allowance and Survivors Benefit Funds after current-year benefits are paid, and any money contributed by the local district then in the Retirement Allowance Adjustment and Expense Funds and not required to meet charges against the local district.

3. Members with 10 years or more of creditable service not then receiving benefit payments receive the actuarial equivalent of their retirement allowances, less the amount of their accumulated contributions returned according to (1).

The sources of funds for these payments is as outlined in (2); payment is contingent on there being money left after compliance with (2).

^{1/} They are not eligible for return of contributions because, as beneficiaries, they are not members, and, having retired, they have no accumulated contributions in the Members Contribution Fund.

Wm. G. Blodgett
July 14, 1977
Page 5

4. Members with fewer than 10 years creditable service not then receiving benefits receive the actuarial equivalent of their retirement allowances, less the amount of their accumulated contributions returned according to (1).

Payments are from the sources outlined in (2), and are made from money left after compliance with (3).

Of course, the "sources" discussed in the above paragraphs are not the Retirement System Funds as a whole, but only the portion of each Fund which has been established under the Retirement System for such districts; that is, the money within each Fund contributed by the local district and earnings attributable thereto.

B. Liability of the Maine State Retirement System
for Payment of Benefits to Beneficiaries and
Employee-Members of Participating Local Districts.

The Maine State Retirement System has limited liability for payment of benefits to employee-members of participating local districts. Section 1092, sub-§ 9. Under that sub-§, the system is liable, with one exception, for benefits only to the extent to which

. . . reserves have . . . been previously
created from funds contributed by such
participating local district, or its
employees for such benefits.

The exception to this limitation is survivors benefits, for payment of which the system

. . . shall be liable . . . to beneficiaries
of members of participating local districts
if such participating local districts have
elected survivor benefits.

The election of survivor benefits must be in accordance with sub-§ 13. Under that subsection, the trustees may, during a year, increase the survivors benefit contribution of a local district over what was required on the basis of the annual valuation. Thus the trustees have the means to insure that a local district survivors benefit contribution (and thus the reserves on hand to pay such benefits) always parallels, or very nearly so, the demand for such benefits.^{2/} This "exception" to limited liability is thereby kept close to or within the general intent to define the System's liability by the amount of reserves "created from funds contributed by such participating local district, or its employees"

The System's limited liability for benefits is further apparent in sub-§ 14, where the phrase "funds that have been established under the Retirement System for such district" identifies the source, nature and amount of money available for distribution to local district members and beneficiaries on cessation of the local district's inclusion in the Retirement System. No funds other than those "established . . . for such district" are reached for distribution.

C. Interrelationship of Subsections 7, 9 and 14 of Section 1092.

Subsections 7, 9 and 14 provide the means by which local districts commence, carry out and cease participation in the Retirement System. Subsection 7 sets up the flow of local district money into the System, via payments for accrued liability, annual valuations for and assessments of employer and employee contributions and proportional administrative expenses, and charges for the valuation itself. The subsection

2/ The participating local district's contribution for benefits other than survivors benefits is made, and may only be adjusted, annually. Sub-§7 of §1092 specifies the annual valuation process; sub-§9 provides that contributions be adjusted to cover deficits and that such adjustment be part of the annual valuation. Compare §1062, sub-§ 3 where essentially the same mechanisms operate for the state contributions. Thus reserves on hand to pay benefits other than survivors could lag behind demand by as much as a year, if not more. If the System were liable for such benefits in the event that the local district ceased participation with insufficient reserves in its System accounts to cover them, the potential for drain would be great and the cost would unfairly be borne by all other members of the Retirement System.

directs who shall pay what to whom and how payments are to be credited and accounted for.^{3/} Finally, it provides for the transfer, upon retirement, of "the required reserves . . . as soon as accumulated, to the appropriate fund of the Retirement System." The only reserves needing to be transferred upon retirement are those in the Members Contribution Fund,^{4/} consisting of the contributions of the particular retiree and interest thereon. Compare § 1062, sub-§ 2 (D). Other reserves are already in the "appropriate fund" -- that is, the Retirement Allowance or Survivors Benefit Fund --, having been directed there by the previous provisions of sub-§ 7. After retirement, more reserves may be "accumulated" for transfer when the annual valuation reveals a gap between the local district's liabilities for benefits and its money on hand in System Funds to pay them. Sub-§ 9 provides that when the annual valuation discloses such a gap, the employer contribution is to be adjusted to compensate. The amount of the adjustment then goes into the deficient fund. Compare § 1062, sub-§ 3(B) and (C). It does not appear that, on retirement, the local district is required to fully fund the actuarial equivalent of the retirees lifetime benefits.^{5/} In some

3/ Local district payments are to be credited by the Treasurer of the State "to the appropriate fund of the retirement system." Within each Fund, a separate account is to be kept of the amounts credited each district. Thus, State and local district monies are commingled, but separately accounted for, as they must be for purposes of annual valuations, distributions on cessation, and other accounting and administrative functions.

4/ In certain cases, transfers from the Retirement Allowance Adjustment Fund might also be necessary. See § 1062, sub-§ 7, ¶¶ (B) and (C).

5/ Where cessation of participation coincided with the annual valuation it might be argued that full funding of benefits was required. However, liabilities and deficits are measured on an annual basis, so even in these circumstances a local district could not be required to fund the full actuarial liability to all its beneficiaries. It could be required to fund for the next year's liabilities. This would seem to be the fairer reading, since otherwise those beneficiaries whose district's cessation of participation coincided with the annual valuation would have an unfair advantage.

Wm. G. Blodgett

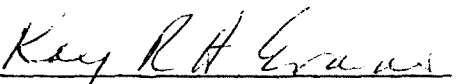
July 14, 1977

Page 8

instances, the reserves accumulated at point of retirement will be sufficient to cover benefits; in others, they will not. When they are not sufficient, adjustments to the local district contribution made at annual valuation make up the difference.

Sub-§ 7 ends with the phrase that accumulated reserves transferred to the appropriate fund "become the property of the State Retirement System." The phrase presumably means that reserves credited to a local district's account but not utilized to pay benefits to local district beneficiaries do not revert to the local district but remain with the System.

The other provisions of sub-§ 9 and those of sub-§ 14 have been discussed earlier. Basically, the remaining parts of sub-§ 9 delineate the liability aspects of the relationship between participating local districts and the Retirement System, making it clear that whatever it may provide local districts by way of administrative convenience and expertise, shared costs and potentially higher returns, the Retirement System is not the insurer of benefits to local district member-employees and beneficiaries. Sub-§ 14 permits the local district and the Retirement System to disentangle themselves gracefully, providing terms for a separation in which the specific responsibilities of each are known.


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