Retirement Employee Contribution Rates
5 MRSA 1095-6+7
5 MRSA 1121-8+9

STATE OF MAINE

Inter-Departmental Memorandum

Date ~~August 1, 1977~~

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

From Kay R. H. Evans, Assistant — Dept. Attorney General

Subject Employee Contribution Rates under the Provisions of 5 M.R.S.A. § 1095, sub-§§ 6 and 7 and 5 M.R.S.A. § 1121, sub-§§ 8 and 9.

Your memo of April 27, 1977, asks whether police and firefighters who are members of the Retirement System through their employment by a participating local district must contribute at the rate of 8% of earnable compensation, as provided in § 1095(6) and/or (7), if their district elects the special benefits of § 1121(8) and/or (9). In the situation you describe, the district is, by its election of the special benefits, changing a previous plan for its firefighters and police under which these members contributed at a lower rate. Your inquiry is whether, having adopted the special benefits, the district may elect to leave these members' contributions at the lower rate. We answer in the negative.1/

The legislatively-desired parallels in costs charged and benefits provided to state employee and participating local district employee members are maintained by linked increases in benefits and contributions. Though there is some basis in the Retirement Law for inferring that a participating local district may in effect choose to itself bear the increased cost of increased benefits, legislative intent to link an increased rate of member contribution to increased benefit is far more readily apparent. Further, where a participating local district has any role in determining rates of contribution or otherwise allocating costs, the statute explicitly so provides. No such provision appears in the sections in question.

OPINION:

Section 1092(7) of Title 5 provides that in general the contributions of participating local district members of the Retirement System are to be computed in the same manner as if the members were state employees; § 1092(8) provides that participating local district members are to receive benefits as if they were state employees. Thus, participating local district members, for the basic contribution rate of 6.5% of earnable compensation called for in § 1095(1), obtain the basic benefit coverage of § 1121(1)(A) and (B), 1122, 1124 and 1125. See our opinion of May 9, 1974. Section 1092(8)

1/ Our answer would be the same if the particiapting local district were structuring its initial benefit plan on entering the Retirement System, rather than changing a previously elected plan.

further provides that participating local district members are entitled to such additional benefits as are elected by the participating local district. Such additional benefits are provided in various statutory sections, and include those increased benefits for police and firefighters specified in § 1121(8) and (9). Your question is whether a participating local district's adoption of these particular increased benefits must be accompanied by an increased rate of member contribution, as provided in § 1095(6) and (7), or whether the participating local district may elect to leave its affected members' contribution rate at 6.5% earnable compensation.

The benefits provided in § 1121(8) and (9) parallel those made optionally available to similar categories of state employees in sub-§§ (1)(C), (D) and (E), and (4)(A), (D) and (F) of the same section. For state employees, explicit statutory language in § 1095(2) through (5) links the optional increased benefits to a mandatory increase in contributions. No explicit language links the increased benefits of § 1121(8) and (9) with the increased contribution rates provided in § 1095(6) and (7). However, the evident desire of the Legislature that state and participating local district members should receive substantially similar treatment is served by implying such a link. There is a firm basis for such an implication in the statutory language, which provides a substantially similar scheme of benefits and contributions for similarly situated state and participating local district employees. Moreover, the increased benefits and increased contribution rates under discussion were established as the only two parts of single legislative acts: P.L. 1965, c. 288, §§ 1 and 2 (firefighters); P.L. 1967, c. 143, §§ 1 and 2 (police).

Sections 1092(7) and 1062(3), read together, provide some basis for an argument that participating local districts could elect to pay the increased cost of the higher benefits themselves. Section 1092(7) provides that a participating local district contributes as an employer as though its members were state employees; § 1062(3) provides that the employer contribution to the Retirement Allowance Fund is to equal the difference between its total liabilities for retirement allowances not provided by members' contributions and its assets on account in the Retirement Allowance Fund. Thus, the two sections could be read to mean that the participating local district could make up the difference if its members continued to contribute at 6.5%. However, it is our opinion that the simultaneous enactment of the provisions for increased benefits and increased member contribution rate strongly indicates legislative intent to couple the two.

Finally, where a participating local district has a voice in determining is members' contribution rate or otherwise allocating costs, its authority is clearly stated. See, e.g., § 1092(13); §§ 1062(7)(B) and 1128. No such authority is given in the sections under discussion.

Accordingly, we conclude that if a participating local district elects for its firefighters and police the benefits of § 1121(8) and/or (9), it and its affected members are bound by the provisions of § 1095(6) and/or (7) as to the members' contribution rate.

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