

MAINE STATE LEGISLATURE

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Retirement Surviving Spouses under Special Resolves
Retirement Survivors Benefits

STATE OF MAINE

Inter-Departmental Memorandum Date August 9, 1977

To Philip Gingrow Dept. Retirement System
From Kay Evans, Assistant Dept. Attorney General
Subject Benefits for Surviving Spouses of State Police Officers Receiving Retirement Allowances under Special Resolves

Your memo of May 10, 1977, asks what, if any, survivors benefits would accrue to the widows of two State Police officers whose occupational disability retirement benefits were changed by the passage of special legislative Resolves. We conclude that although the Resolves affected the rate at which benefits were to be paid and provisions closely related thereto, they did not change the nature of these officers' retirement itself. The officers remained on disability retirement and their surviving spouses would be entitled to the survivors' benefits to which any surviving spouse of the State Police officer disability retiree would be entitled.

OPINION

Your memo states the case of two State Police officers retired under the occupational disability provisions of the retirement law whose retirement benefits were changed by the provisions of special legislative Resolves.¹ With differences arising from the officers' different ranks in the State Police, the Resolves in relevant part² directed the Trustees of the Retirement System to pay to each officer "retirement at the rate of the current pay of a (rank specified) in the Maine State Police," with "those pay raises to which an active (rank specified) may become entitled" for the rest of his life. Neither Resolve made any further mention of the retirement law or specified any effect upon it. It should be noted in particular that no language appears which provides that the higher benefit is to be paid in lieu of retirement benefits then being paid nor is there comparable language indicating an intent³ to change the nature of these officers' retirement from disability³ to ordinary or some unique form.

1. Resolves 1971, c. 53; Resolves 1973, c. 56.
2. The Resolves also provided continuation of the medical benefits to which active members of the State Police were entitled.
3. The preamble to Chapter 56, Resolves, 1973, mentions that the officer in question has suffered disability. Chapter 53 Resolves of 1971 does not mention disability. The preamble of Chapter 56 is interesting, though of no particular usefulness in interpreting a legislative act unambiguous on its face. In Re Camden Shipbuilding, 277 F. Supp. 751, 753 (Dist. Ct., Maine, 1964).

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On its face, each resolve affects only the rate at which these officers' retirement benefits are to be paid. Proceeding on the required assumption that the Legislature intends to act reasonably when it does an official act, it seems most reasonable to consider these officers' status as disability retirees to be unaffected by the Resolves, except insofar as their benefit payments are changed. To so regard them allows the Retirement System to treat them as disability retirees for all purposes except amount of payment, thus maintaining administrative efficiency and fairness while implementing the plainly expressed intention of the Legislature.

The impact of the Resolves on amount of benefits is not totally without ripple effect. Those provisions of the disability scheme closely tied to benefit payment are necessarily affected. For instance the reduction of benefit provided by § 1122 (4) is inapplicable⁴ since it is inconsistent with the terms of the Resolves, in which the Legislature indicated that the rate of benefit set therein is to continue for the recipients' lifetime. Section 1122 (3) is also inapplicable to these officers, because the medical exams required thereby are clearly keyed to the earnings reduction of § 1122 (4).

Accordingly, since these officers remain "retired under the disability provisions" notwithstanding the passage of the Resolves, their surviving spouses would be entitled to those benefits to which any surviving spouse of a State Police officer disability retiree would be entitled.⁵

KAY EVANS
Assistant Attorney General

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4. Our opinion of June 25, 1976, reaches this same conclusion, though for different reasons.
 5. Sections 1121 (1)(c), 1124 and 1125 provide the various options and specify the conditions on which each may be elected.