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*Retirement, Mandatory Retirement
5 M.R.S.A. § 784*

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September 19, 1977

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

From: Kay R. H. Evans, Assistant Attorney General

Re: Application of P.L. 1977, c. 580: An Act to Prohibit the Practice of a Mandatory Retirement Age

Your memo of August 17, 1977, asks for an opinion as to the combined operation of Chapter 580, P.L. 1977, and the Retirement Law in the case of an individual over 70 years of age and previously retired under the Maine State Retirement System who returns to work in a position in which Retirement System membership is mandatory or optional.

Chapter 580, which prohibits the use of a mandatory retirement age, does not give employees previously retired on account of a mandatory retirement age provision an automatic right to be returned to their previous employment. Rather, the intent of the Act with respect to persons seeking employment is that older job seekers of equivalent ability be enabled to compete for work on equal terms with their younger counterparts.^{1/} Assuming then that a Retirement System retiree over 70 has become reemployed in a position mandatorily or optionally covered by the Retirement Law, you ask what effect reemployment has upon her/his retirement benefits and status as a member and/or beneficiary.

^{1/} While the Legislature has indicated its intent that there be no discriminatory or dissimilar treatment on account of age among persons seeking jobs, c. 580, §§ 2 and 15, it is worth noting that the "criteria and standards" provision of the Act, § 2(3), relates to termination of employment only. However, 5 M.R.S.A. § 784 prohibits the state from engaging in discriminatory employment practices based on the age of the job applicant.

The provisions of the Retirement Law with respect to restoration to service, 5 M.R.S.A. § 1123, would apply to the situation of a reemployed retiree over 70 in the same manner as to any other retiree returned to service. This section is quite explicit as to the treatment of both benefits and status, but three aspects should be pointed out.

First, recipients of disability benefits and those of benefits other than disability would be treated differently on restoration to service after 70, just as they are treated differently on restoration to service at any other age. Since Chapter 580, § 13, eliminates from § 1122(3)(a) the provision that a disability retirement allowance ceases at mandatory retirement age, it is clear that in some cases a retiree over age 70 may still be receiving a disability allowance at the time of reemployment. Such a retiree would, under the present statute, be treated differently from a recipient of benefits other than disability on return to service. That is, the retirement allowance of a disability retiree continues until annual earnable compensation equals or exceeds average final compensation at retirement, at which time the disability retirement allowance ceases,^{2/} and the beneficiary is returned to membership, becoming again a contributor. On the other hand, the allowance of a recipient of benefits other than disability benefits is reduced proportionately when the combination of retirement allowance and monthly earnable compensation exceeds 1/12 of average final compensation. If the retirement allowance is eliminated as a result of the reduction, the beneficiary again becomes a contributing member of the System. The general effect of Section 1123 is to permit disability retirees restored to service to earn more than other retirees returned to service before their retirement allowances are affected. That effect holds true in the situation of retirees over 70 who are restored to service.


A second effect of § 1123 is to make membership in the Retirement System mandatory where it might otherwise be optional. Thus, if a beneficiary returned to service in a position in which membership was ordinarily optional under § 1091(1), and if the other § 1123 criteria for return to membership were satisfied, § 1123 would appear to mandate a return to membership,^{3/} notwithstanding the option granted in § 1092(1).

^{2/} Except Legislators and legislative employees.

^{3/} Again excepting Legislators and legislative employees.

In this way, § 1123 operates to prevent the opportunity otherwise available to certain employees^{4/} to draw both full benefits and full salary.

Thirdly, while § 1123 appears to cover the details of credits for service and computation of benefits for employees returned to service and membership, § 1062(2)(E) directs the retransfer of funds from the Retirement Allowance Fund to the Members Contribution Fund.



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^{4/} Those who return to work as elected officials or as officials appointed for fixed terms, § 1091(1).