

MAINE STATE LEGISLATURE

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Re: Retirement Law Changes ...
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October 14, 1977

To: Philip R. Gingrow, Assistant Executive Director,
Maine State Retirement System

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

Re: Adoption of Repeal Provisions of Retirement Law by Participating
Local Districts

Your memo of June 2, 1977, sets out the following facts:

A participating local district with an existing retirement plan indicated an alteration in its plan by adopting, some time before July 1, 1977, the provisions of Chapter 542, P.L. 1973. The alteration was to be effective on July 1, 1977. However, July 1, 1977, was also the effective date of legislation^{1/} which repealed and replaced certain provisions of Chapter 542, specifically those provisions establishing the measure of disability retirement benefits. The July 1, 1977, amendments are themselves without effect on the retirement plan of the participating local district unless specifically adopted thereby. 5 M.R.S.A. Sec. 1092(12).

Your question is whether the disability benefit scheme of a participating local district's retirement plan remains unchanged, despite the district's adoption of provisions intended to alter that plan, when the date on which the intended alteration is to take effect coincides with (or follows) the effective date of the repeal and replacement of certain of the altering provisions.

^{1/} P.L. 1975, c. 622, Sec. 54.

It is my opinion that a participating local district's adoption of benefit provisions is effective as of its date as to all of the adopted provisions then in force, notwithstanding that under the terms of the adoption, the changes instituted thereby do not become operative until a later date. Since the adoption is effective as of its date, amendment or repeal of the adopted provisions subsequent to the date of adoption does not nullify the adoption or render it without effect as to provisions subsequently amended or repealed.

OPINION:

The facts stated and question asked raise the issue of the effect of repeal and replacement of certain benefit provisions of the Retirement Law after their adoption by a participating local district pursuant to section 1092(12). By the terms of the adoption, the adopted provisions become an operative part of the participating local district's retirement plan on a specific date subsequent to their adoption; the date on which they become operative was also the effective date of an amendment of the Retirement Law which repealed and replaced some of the adopted provisions. Your question is whether the amendment of the Retirement Law in effect nullifies the adoption, so that the participating local district's retirement plan remains as it was prior to the adoption.^{2/}

Amendment by repeal and replacement^{3/} raises two problems: the effect of the repeal and the effect of the replacement of the repealed provisions by other provisions. In the situation under discussion, there is no issue of the effect of the replacement.^{4/}

As to the effect of the repeal, the general rule is that all rights dependent on the repealed provisions are destroyed by the repeal, unless a statutory savings clause intervenes to protect particular rights or the rights in question have become vested prior to the repeal. Sands, 1A Sutherland Statutory Construction (4th Ed.,

^{2/} The replacement provisions are not automatically effective as to a participating local district, but must be specifically adopted thereby. 5 M.R.S.A. Sec. 1092(12).

^{3/} The combination of repeal and replacement equals amendment of a statute. Sands, 1A Sutherland Statutory Construction (4th ed., 1972), § 23.02.

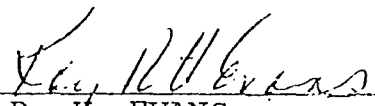
^{4/} See fn. 2, supra.

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1972) § 22.36; Beechwood Coal v. Lucas, 137 A.2d 680, 684 (Md., 1958). Either theory is arguably applicable in this situation,^{5/} especially from the perspective of a member whose retirement occurred at such time that his benefit would be affected. A clearer and more sound basis for the conclusion that the adoption in question was unaffected by the later repeal is the evident Legislative intent to allow districts, whose participation is optional in the first instance, maximum freedom to structure their retirement plans. When a district has done everything that it can do, under the statute, 5 M.R.S.A. § 1092(12), to institute a change in its plan, it would seem contrary to the general legislative intent to conclude that the subsequent repeal was intended to have the effect of nullifying the district's earlier choice.

It seems likely, if not obvious, that the delayed effective date for the district's change in its plan was meant to serve a variety of fiscal and administrative purposes, both for the district and for the Retirement System. It would be at least inconvenient to, in effect, compel participating local districts to make changes in benefit plans effective as of the date of adoption, at the risk of otherwise of having their adoption nullified by a subsequent change in the Retirement Law.

The adoption, prior to July 1, 1977, by the participating local district in question of the provisions of Chapter 542, P.L. 1973, is effective as to all the provisions of that chapter and amends the participating local district's retirement plan to include the benefits provided therein.



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Assistant Attorney General

KRHE:mfe

5/ Maine's saving clause is 1 M.R.S.A. § 302; see also Dickinson v. Maine Public Service Co., 244 A.2d 549 (Me., 1968); Kennie v. City of Westbrook, 254 A.2d 39 (Me., 1969). For the "vested rights" theory, see Adelman v. Adelman, 296 NYS 2d. 999 (1969); Inc. Village of Northport v. Guardian Fed'l S. and I., 384 NYS 2d 923 (1976).