

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333
October 24, 1977

To: Peter M. Damborg, Director, Office of CETA Planning
and Coordination

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

Re: Request for Opinion in Support of your Request for
an Extension of the Effective Date of Certain
Federal Regulations Governing Payment of CETA
Funds into Retirement Systems

By memo of October 17, 1977, you requested that we review certain Federal regulations regarding the payment of CETA funds into retirement systems, and determine whether the State of Maine and its Retirement System could comply with those regulations without an extension of the deadline of October 1, 1977. You asked that we prepare an opinion in support of the request for an extension, if we determined that an extension was necessary. Our review indicates that such a request would be fully justified, and this opinion is written in support thereof, as required by the Federal regulations.

OPINION:

By regulation, 29 C.F.R. § 98.25, the United States Department of Labor now limits the payment of CETA funds into retirement systems, prohibiting such payment except where a retirement system operates under an approved plan for the handling of such payments in compliance with the Federal regulations. A compliance deadline of October 1, 1977, is specified. Department of Labor Regional Letter #287-77 indicates that extensions of the compliance date will be allowed, where compliance necessitates changes in State law and those changes cannot be made in time.

The law governing the Maine State Retirement System (MSRS) is found at Title 5 M.R.S.A. §§ 1001, et seq. Membership in the MSRS is mandatory for most, if not all, of the CETA employees employed under its prime sponsorship. 5 M.R.S.A. § 1091(1). Membership in the System requires regular employer and employee contributions. The MSRS does not now, and cannot without statutory changes, comply with the Federal regulations governing employer contributions. In the Maine statute, the Legislature has made detailed specifications regarding the financing of the System. These specifications include descriptions of the five Funds to which "all of the assets of the retirement system" are to be credited. 5 M.R.S.A. § 1062. None of these described Funds presently meets the Federal criteria. Neither the MSRS Board of Trustees nor its administrative staff is authorized to establish any other Fund,^{1/} and it is our opinion that the Legislature alone may do so. The Federal requirements appear to necessitate something more than a mere accounting change which the System, by its Trustees or administrators, could itself institute. Since the Maine Legislature does not convene again until January 4, 1978, it is clear that it is not possible to make the necessary statutory changes by the October 1, 1977, deadline.

Moreover, alternatives to bringing the MSRS into compliance themselves would require statutory changes. One such alternative would be the exclusion of CETA employees from membership in the MSRS. The Board of Trustees of the MSRS has authority to make such an exclusion, 5 M.R.S.A. § 1091(4). However, eligibility of State employees for group accident and health insurance depends on eligibility for membership in the Retirement System. 5 M.R.S.A. § 285. In order to exclude CETA employees from otherwise mandatory Retirement System membership without denying them accident and health insurance coverage,^{2/} a statutory change would be required.

Another alternative would be to make MSRS membership optional for CETA employees. Since eligibility under State law constitutes eligibility for accident and health insurance, optional membership under the Maine Retirement Law would not jeopardize CETA employees' accident and health insurance coverage, even though Federal requirements would operate to prevent membership. However, while the MSRS Board of Trustees has some discretion to deny membership, it has none with respect to optional membership, for which the Legislature has specified the limits. 5 M.R.S.A. § 1091(1). If membership were to be optional for CETA employees, a statutory change would be required.

^{1/} The Board of Trustees may combine or eliminate Funds under § 1062(8).

^{2/} State employees' insurance premiums are paid in full by the State. Employees pay for spouse and dependent coverage.

Under any of the three possibilities discussed above, a related question poses difficulty for the MSRS. The question would be whether and how to credit CETA time for the purposes of computing benefits for a CETA employee who did not move directly from a CETA position to employment covered by the MSRS, but who some time later entered covered employment and wished credit for time worked as a CETA employee. Such service would have to be purchased by payment of an amount equal to the employee and employer contributions, plus interest. The issue is who would pay for the employer's share. The employer's contributions, if any, made during CETA employment, would have been returned under the Federal regulations. Possible solutions would be to require the employee to purchase her/his CETA time by paying both the employee's and employer's share, or to require the future State or local district^{3/} employer to pay the employer's share of the purchase^{4/} or to simply make CETA time unavailable for purchase. Any such change requires at least study and certainly regulatory and possibly statutory change.

For the above reasons, in order to make an intelligent choice and because any choice requires legislative action, it is our opinion that an extension of the compliance date of 29 C.F.R. § 98.25 is necessary.


KAY R. H. EVANS
Assistant Attorney General

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- 3/ Certain entities within the State are eligible to participate in the MSRS as participating local districts. 5 M.R.S.A. § 1001(11-A). The State pays no portion of their contributions or costs.
- 4/ Such a regulation would seem to be undesirable as it might often make the former CETA employee a less attractive candidate to a new employer.