

# MAINE STATE LEGISLATURE

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Retirement: University of Maine Employees,  
5 M.R.A. 1094-16

JOSEPH E. BRENNAN  
ATTORNEY GENERAL



RICHARD S. COHEN  
JOHN M. R. PATERSON  
DONALD G. ALEXANDER  
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

November 18, 1977

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

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

Re: Eligibility under 5 M.R.S.A. § 1094, sub-§ 16, of University of Maine Employees with Membership in the Maine State Retirement System

By memo of August 11, 1977, you requested an opinion on the operation of 5 M.R.S.A. § 1094(16), as applied to certain professional employees of the University of Maine who retire as members of the Maine State Retirement System. Your question is whether such employees may accumulate and purchase for retirement credit days of sick leave beyond 90, despite present University personnel policy which, in effect, limits available sick leave days to 90, with extensions possible by grant of the Board of Trustees in the event of an actual incapacity extending for a longer period.

In my opinion, for purposes of the Maine State Retirement System in granting creditable service, the present University policy is inapplicable and such members' right to purchase for credit sick leave days beyond 90 is to be determined as if the member had continued to be a State employee to point of retirement.

FACTUAL BACKGROUND.

Prior to the enactment of Chapter 229, P. & S.L. 1967, employees of the State teachers colleges were employees of the State. As such, they were of course governed by State personnel policy, and those who were members of the Maine State Retirement System were thereby treated as any other State employee. Where personnel policy and the retirement law dovetailed with respect

to the granting and crediting of sick leave, the result was to count toward an employee's total creditable service for retirement purposes the one-day per month sick leave granted under personnel policy, some portion of which was automatically counted for credit if unpaid and another portion of which could be purchased for credit.

Enactment of Chapter 229 merged the teachers colleges and the University of Maine into a single State University system, responsible for its own governance. Employees of the teachers colleges became employees of the University system. Those who were employees of the teachers colleges at the time of transition retained certain rights<sup>1/</sup> which they had held as State employees, among them the right to choose between continued membership<sup>2/</sup> in the Maine State Retirement System or membership in the University retirement program. Chapter 229, § 4-D, P. & S.L. 1967. For each employee electing to remain a Maine State Retirement System member, the University was directed to, in effect, reimburse the State for the amount of the employer's contribution toward that employee's retirement.<sup>3/</sup>

After the transition, all employees of the University, including former teachers college employees, came under the administrative authority of the University system, including its personnel rules and policies. The University's sick leave

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- 1/ Such employees could also opt to retain their personnel classification, salary level and tenure rights as they existed under teachers college policies or to "adopt such benefits as they exist under the system in effect at the University at the time the election is made."
  - 2/ Only such memberships in the Maine State Retirement System as then existed could be continued. Persons not Retirement System members at the time of transition, whether old or new employees, could not thereafter become Retirement System members.
  - 3/ The University was directed to pay the contribution amount to the Treasurer of the State, not to the Retirement System.

policy for professional employees provides for up to three months of paid sick leave<sup>4/</sup> for employees with at least one year of service. Extensions are dealt with on a case-by-case basis by the University's Board of Trustees. There is no accrual of days of leave against days of work.

QUESTION PRESENTED.

The question presented is whether a former employee of a State teachers college who elected to remain a Maine State Retirement System member under § 4-D, c. 229, P. & S.L. 1967, retains the right provided under State personnel policy to accumulate sick leave at the rate of one day per month of work, so that, under the provisions of 5 M.R.S.A. § 1094(16) she/he may purchase for credit for purposes of computing her/his retirement benefit days of sick leave earned beyond 90.<sup>5/</sup>

OPINION.

In my opinion, the Legislature in providing to former teachers college employees the option of continued membership in the Maine State Retirement System must have intended that such employees would continue to be treated for retirement purposes as State employees. The employer contribution is computed as if for a State employee; implicitly, the employee contribution is similarly computed. If the fundamental obligations are those

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4/ It is not clear from the materials provided whether the 3 months is cumulative through the years of employment, or whether the limit applies to each instance of illness or accident. The Statement of Policy appears to contemplate instances of incapacity, but the Statement of Accrued or Accumulated Leave Time implies that each employee is viewed as having a total of three months (90 days) of such time in the course of employment.

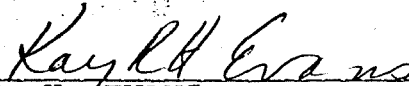
5/ If the right to accumulate is not retained, such an employee apparently is viewed as being able to receive such credit for 90 days unpaid leave only, with no ability to purchase for credit days beyond 90. This interpretation is based on the University's Statement of Sick Leave Policy, though as noted above, fn. 4, supra, that Statement and related documents are readily susceptible of a different reading.

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of a State employee, the rights and benefits should be as well. Where a given right or benefit is composed of personnel policy and retirement law provisions inextricably interwoven, as in the accumulating and crediting of sick leave, both policy and the related provisions of law must apply together.

To decide otherwise would create a morass of complications in applying the retirement law to the employees in question. Where the retirement law existed unrelated to personnel policy, it would apply as if to a State employee; where related to personnel policy, it would be differently applied or be made inapplicable, according to the terms of the University personnel policy. The Legislature cannot have intended such a result, particularly when its effect, beyond unnecessary confusion, would be to continue certain obligations and duties while terminating certain clearly related rights and benefits.

I emphasize that the effect of the conclusion that the employees in question may accumulate sick leave at a rate of one day per month of employment and may purchase for credit days of sick leave beyond 90, as provided in 5 M.R.S.A. § 1094(16), is on the computation of retirement credit only. Insofar as actual granting and uses of sick leave for sick leave purposes is concerned, such employees are of course governed by University policy.

  
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KAY R. H. EVANS  
Assistant Attorney General

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