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12, Tiverton, T1 Local District (Employees)
5 M.R.S.A. 1091 (1)

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November 18, 1977

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

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

Re: Membership of Certain Individuals under 5 M.R.S.A. § 1091(1).

Your memo of September 1, 1977, asks that we review Maine State Retirement System administrative policy interpreting and applying to participating local districts and certain of their employees, the language of 5 M.R.S.A. § 1091(1) which provides for optional Retirement System membership for "any class of elected officials or any class of officials appointed for fixed terms." You indicate that the Retirement System has read this to mean that unless exempted from membership by their participating local district, the described officials have, personally and individually, an option whether to join the System.

You contrast this interpretation with a reading of the section which would permit the participating local district to specify optional membership for the described officials.

I conclude that the option, if it exists at all, belongs to the described officials, not to the participating local district. The primary rule of statutory interpretation that statutes are to be construed, if at all possible, so that no portion thereof is rendered "inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error," ^{1/} compels me to conclude that the option does exist, despite language elsewhere in the retirement law which provides that membership in the Retirement System is compulsory for all participating local district employees who are neither exempted

^{1/} Sutherland Statutory Construction, Vol. 2-A, § 46.06 (1973).

from membership nor were employees of the local district at the time its participation in the Retirement System began.

In the context of the membership of participating local district employees, § 1091(1) cannot be read without reference to § 1092(1) and (5). Section 1092(1) in relevant part provides that:

Such local district shall designate in their (sic) approval (of participation) any class of employees, otherwise provided for by local pension provisions, who may be exempted from this chapter.

Section 1092(5) provides:

Membership in the Retirement System shall be optional with employees in the service of a participating local district on the date when participation of the local district begins. . . . Membership shall be compulsory for all employees entering the service of such participating local districts thereafter, except those who are exempted under subsection 1.

Under § 1092(5), it appears that participating local districts may only exempt employees from membership. Optional membership is made available only to ". . . employees in the service of a participating local district on the date when participation of the local district begins;" for those entering the participating local district's service thereafter, membership is compulsory for all except those exempted under § 1092(1).

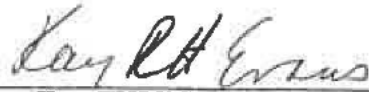
However, the conclusion that §§ 1092(5) and (1) operate alone to define membership for a participating local district employees effectively reads out of the statute that language of § 1091(1), which provides in equally definitive terms that

Membership shall be optional in the case of any class of elected officials or any class of officials appointed for fixed terms.

The term "any" is all encompassing and on its face would apply to those officials of participating local districts to whom the descriptions applied, as well as to such state officials. In order to give effect to § 1091(1) in a context to which in its plain meaning it would appear to apply, the portion in

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question must be read as a second exception to the § 1092(5) requirement of compulsory membership. That is, membership in the Maine State Retirement System is compulsory for all employees entering participating local district service after the local district's participation in the Retirement System begins, except for (a) any class of employees which is exempted from membership by the executive body of the participating local district in its approval of participation, § 1091(1), and (b) any class of elected officials or officials appointed for fixed terms, each of whom individually have the option of membership, § 1091(1). Another way of stating the result is to say that employees of participating local districts who are elected officials or officials appointed for fixed terms are entitled to membership in the Retirement System, if at all, on an optional basis.



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