

MAINE STATE LEGISLATURE

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5 March 1974-10

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February 10, 1978

To: Philip Gingrow, Assistant Executive Director, Maine State Retirement System
From: Kay R. H. Evans, Assistant Attorney General
Re: Additional Creditable Service for State Employees Who Have "Lapsed" Sick Leave at Time of Retirement (REVISION OF OPINION OF JANUARY 16, 1978)

Your memo of December 16, 1977, asks for an opinion on the accrual and purchase for retirement credit, by State employees, of days of sick leave under the second paragraph of 5 M.R.S.A. § 1094(16).

The relevant portion of the statutory section in question reads as follows:

Accumulated or accrued sick leave or unused vacation leave or a combination of both, 1/ for which the member is credited on termination of service, but for which the member does not receive payment, shall be credited as membership service. Accumulated or accrued leave credits for membership service shall not exceed a total of 90 days, except as provided in this section.

1/ While the statute refers to vacation leave and the combination of vacation and sick leave, it appears that presently no vacation leave is available to State employees for retirement credit under § 1094(16). This is so because Personnel Rule 11.7 provides that unused vacation leave accumulated to the credit of an employee who departs State service "shall be paid." According to the Dept. of Personnel, such payment is consistently made in accordance with the Rule. The only leave available for credit under either of the 1094(16) mechanisms (automatic credit or purchased credit) is that leave "for which the member does not receive payment." Accordingly the remainder of this opinion will discuss § 1094(16) in terms of sick leave only, since that is presently the only form of leave available to State employees which meets the statute's criteria.

Accumulated or accrued leave beyond 90 days may be credited for membership service, up to the maximum set as accumulated or accrued, without lapsing, by personnel rules or regulations, or by contract, if:^{2/}

The first paragraph of this subsection provides State employees with up to 90 days of retirement credit for sick leave accumulated, unused and unpaid at point of retirement. No additional contribution is required for this credit and this office has interpreted the paragraph, in the light of the rest of the section, to permit employees to draw upon leave which, under the personnel rules,^{3/} has lapsed to make up the 90 days of credit.^{4/}

The second paragraph of sub-§ 16 provides that a State employee may purchase additional sick leave days for credit. The maximum number of days available for purchase is that "set as accumulated or accrued, without lapsing, by personnel rules or regulations. . . . " Since Personnel Rule 11.8 presently limits accrued unexpired days of sick leave to 90, a State employee may purchase up to 90 additional days credit. In my opinion, the second paragraph of sub-§ 16 combines with Personnel Rule 11.8 to establish a maximum number of purchasable days, not to define a forbidden territory of earned but irretrievable days.^{5/}

2/ The remainder of sub-§ 16 provides mechanisms by which various categories of Retirement System members may purchase leave days for credit.

3/ Personnel Rule 11.8.

4/ See Opinion to you of May 31, 1977.

5/ My opinion to you of May 31, 1977, contains an error which undoubtedly added to the confusion surrounding this question. The second sentence of the first paragraph on page 2 of that opinion is wrong. That sentence reads:

Present language (of sub-§ 16) provides that days of lapsed leave are not to be included in the number of days beyond 90 for which membership credit may be purchased (emphasis in the original).

The opposite of this is the simpler, more logical and more useful way to read the statute. Thus, lapsed days may be drawn on to make up the 90 days of purchasable credit, just as they may be drawn on to make up the 90 days of non-purchase credit.

Thus, lapsed days are available for purchase up to the present maximum of 90. If the maximum set by personnel rules should change, the number of days, lapsed or unlapsed, available for purchase would change accordingly.^{6/}

Kay R H Evans

KAY R. H. EVANS
Assistant Attorney General

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6/ Thus construed, one effect of the subsection is to provide some incentive for employee-members not to utilize sick time unnecessarily but rather to translate that benefit into increased retirement credits.