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Retirement - Earnable compensation
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February 17, 1978

To: W. G. Blodgett, Executive Director, Maine State Retirement System
From: Kay R. H. Evans, Assistant Attorney General
Re: Retirement Contributions under Chapter 622, P.L. 1975, § 1
(earnable compensation)

Your memo of August 1, 1977, asks for an opinion whether retirement contributions should be deducted, in the case of public school teachers, from certain amounts paid those teachers which may not constitute "earnable compensation" under the retirement law. Thus framed, I understand your request to present two questions: 1) whether the amounts in question are part of earnable compensation, and 2) if not, should retirement contributions be deducted from them. The short answers are that these amounts are not part of earnable compensation and that retirement contributions should not be deducted from them.

With respect to the question whether these amounts are part of earnable compensation, the definition of earnable compensation to be considered is the relevant part of the definition enacted by § 1 of Chapter 622, P.L. 1975, and applicable to retirement allowances first payable after July 1, 1978:^{1/}

"Earnable compensation" shall mean actual compensation, including maintenance if any, but shall not include payment for more than 30 days of accumulated or accrued sick leave or unused vacation leave or a combination of both, nor include any other payment which is not compensation for actual services rendered or which is not paid at the time such services are rendered.

The amounts in question are payments for unused sick or vacation leave in excess of 30 days and bonuses paid at retirement on the basis of years of service. The amounts paid for days of unused sick or vacation leave in excess of 30 are clearly excluded from annual compensation by terms of the definition. The bonus amount, while it may be additional compensation "for actual services rendered," is not "paid at the time such services are rendered" and is therefore also excluded.

The question whether retirement contributions should be deducted from these amounts is answered by 5 M.R.S.A. § 1095(1):

Each member shall contribute at a rate of 6.5% of earnable compensation, except as hereinafter provided.

The exception clause refers to rates of contribution other than 6.5%, not to the basis on which the percentage amount is computed. Thus, whatever the precise contribution rate, "earnable compensation" is the basis from which the percentage contribution is deducted. Amounts not included in earnable compensation would not be subject to the contribution requirement and no retirement contribution deductions should be made from those amounts.

Kay R H Evans

KAY R. H. EVANS
Assistant Attorney General

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