

MAINE STATE LEGISLATURE

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Retirement Treatment of Compensation paid
AFTER Death
5 M.R.S.A. § 1001 - 9

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May 23, 1978

To: Philip Gingrow, Assistant Executive Director,
Maine State Retirement System

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

Re: Inclusion of Payments Made After Death of Member as
Earnable Compensation

Your opinion request of March 24, 1978, asks whether "payments made to a widow or widower of a member after the death of the member should be included as earnable compensation when the payments made do not represent wages, salary or other compensation earned by the member prior to his death."

Your memo establishes the factual situation of the death of a public school teacher whose employer indicates that the full amount of the deceased's contracted-for-salary remaining unpaid at death will be paid to the surviving spouse. You point out that not only will amounts be paid which are actually due for services rendered prior to death, but the amount promised for services not yet rendered at time of death will also be paid.

In my opinion, resolution of the question turns on whether the payments in question do or do not in fact represent "actual compensation," 5 M.R.S.A. § 1001(9)^{1/},

^{1/} Section 1001(9) has been amended, effective July 1, 1978, by P.L. 1975, c. 622, § 1, to read:

"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.

in the form of salary or of fringe benefits for services rendered. See Attorney General's Opinion of October 11, 1968. If the post-mortem payments to the beneficiary of the portion of the contract amount remaining unpaid at the time of death represents compensation in the form of fringe benefits, then that portion must be included in computing the member's earnable compensation. If, however, the amount in question in fact represents a kind of gratuity, the payment of which was not tied to any legal obligation arising out of the employment relationship, it cannot be included in the combination of the earnable compensation.

I would note that the test outlined in the 1968 opinion - whether the amount in question "is included on the appropriate payroll with proper deductions withheld" - is not the only test by which the nature of a particular payment as "compensation" is determined. For instance, a collective bargaining contract or other employment agreement might include a provision for full payment to a beneficiary of an employee's contracted-for-salary on the death of the employee, in which case the payment would be compensation in the form of a fringe benefit.

Kay R. H. Evans

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