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STATE OF MAINE *Memorandum 1094-13*

Inter-Departmental Memorandum Date September 8, 1978

To Philip R. Gingrow, Ass't Exec. Dir. Dept. State Retirement System
 From Kay R. H. Evans, Assistant Dept. Attorney General
 Subject Military Service Credit Under 5 M.R.S.A. § 1094(13) for Retirees
on Special Plans

Your memo of September 5, 1978, asks for an opinion on the question of the applicability of 5 M.R.S.A. § 1121(4)(F), as amended by P. L. 1975, c. 322, § 50-A, to a retiree who began drawing a retirement allowance prior to July 1, 1975. The relevant portion of ¶F provides that a retirement allowance of a person retired under the special plan provided in that paragraph shall include:

. . .an additional 2 percent of his average final compensation for each year of membership service not included in the age and service conditions for retirement under this paragraph.

By P. L. 1975, c. 742, § 4, ¶ 3, this provision was made effective for retirement allowances first payable on or after July 1, 1975. Thus, in general, it would appear that the provision is not applicable to retirement allowances which commenced prior to that date.

However, the specific type of "membership service not included in the age and service conditions for retirement" here in question is that provided in 5 M.R.S.A. § 1094(13). In relevant part that sub-section provides:

Anything to the contrary notwithstanding
 military service shall be credited to all
 state employees who are unable to other-
 wise qualify for military service credits. . .
 It is the intent that these provisions shall
 apply to all persons, active or retired, . . .

In my opinion, the language of sub-section 13 underlined above, the mandatory nature of the provision and the clear legislative intent that the credit should be available to both active and retired members, all operate to modify the provision that the portion of 5 M.R.S.A. § 1121(4)(F) in question is effective only with respect to retirement allowances first payable on or after July 1, 1975. Accordingly, a retiree who began drawing a retirement allowance prior to July 1, 1975 may now pay the required contributions and begin receiving an increased allowance.

Philip R. Gingrow
September 8, 1978
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This opinion addresses only the specific type of "membership service not included in the age and service conditions for retirement" in question and should not be interpreted to apply to other forms of such service.



KAY R. H. EVANS
Assistant Attorney General

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