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5 M.R.S.A. 1128
7-10-78

STATE OF MAINE

Inter-Departmental Memorandum Date October 17, 1978

To Philip R. Gingrow, Asst. Exec. Dir. Dept. Retirement System

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

Subject Payment of 1/2 of 1% RAAF contribution by employees of participating local districts.

Your memo of August 3, 1978 asks whether 5 M.R.S.A. § 1062(7)(D) would permit a participating local district to require employees to contribute 1/2 of 1% of their salaries if the district decides to include the provisions of 5 M.R.S.A. §1128 (cost of living adjustments) as part of its retirement plan.

The question arises because of amendments to § 1062(7)(D) made by P.L. 1975, C. 622. These amendments repealed ¶ B of sub-§ 7, which in relevant part required members to contribute at the rate of no more than 1/2 of 1% of salary to the Retirement Allowance Adjustment Fund. The amendments also repealed the last two sentences of ¶ C of sub-§ 7 which, under certain circumstances, authorized the Board of Trustees of the Retirement System to reduce or increase the rate of employees' contribution. Paragraph D of sub-§ 7 was unaffected by the C. 622 amendments and continues to read

Any participating local district may elect to accept the provisions of section 1128 and may require its members to make the 1/2 of 1% contribution, but may assume the obligation if desired.


Your memo notes that in January of 1969 the Board of Trustees voted to eliminate the 1/2 of 1% contribution by state employees and teachers and then voted to eliminate that contribution by members who were employees of participating local districts.

You have asked two specific questions: 1) is ¶ D still effective after the repeal of ¶ B, and 2) if ¶ D is still effective, does the action of the Trustees in 1969 have any effect at this time since its authority to take such action has now been repealed.

The brief answers to your questions are first, that ¶ D was unaffected by the repeal of ¶ B; secondly, the action of the Board of Trustees in 1969 to eliminate the contribution in question and the subsequent repeal in 1975 of the Board's authority to reduce or increase that contribution, combine to render ineffective that portion of ¶ D which permits participating local districts to require their members to make the 1/2 of 1% contribution.

The situation prior to 1975 was that the provision of ¶ B that "each member shall contribute at the rate of no more than 1/2 of 1% of his salary to the Retirement Allowance Adjustment Fund" was, for employees of participating local districts, modified by the provision of ¶ D that the local districts "(could) require (their) members to make the 1/2 of 1% contribution but (could) assume the obligation if desired." Thus while the contribution in question was mandatory for state employees and teachers, it was required of employees of participating local districts only at the option of the local district. The repeal of ¶ B did not implicitly repeal ¶ D, since ¶ D was not inseparably dependent on ¶ B for its effectiveness.

In contrast, the authority provided in ¶ C for the Board of Trustees to reduce or increase the rate of contribution was applicable to all members. Only if this authority were so applicable could the Board fully exercise its authority and responsibility for management of Retirement System funds. Thus, the permission given in ¶ D to participating local districts adopting the provisions of § 1128 to require of their employees the 1/2 of 1% contribution was modified by the authority given the Board of Trustees in ¶ C to reduce or increase the rate of contribution. The Board's action in 1969 eliminating the contribution for all members was an exercise of this authority. Assuming that the Board has taken no action since 1969 and before 1975 which reinstated the employee contribution and assuming that the Board has not otherwise altered or modified its decision to eliminate the contribution, the decision to eliminate remains effective and prevents participating local districts adopting the provisions of § 1128 from requiring the 1/2 of 1% contribution of their employees. The repeal in 1975 of the authority of the Board to reduce or increase the contribution rate freezes the 1969 action and renders ineffective that part of ¶ D which permits a participating local district to require the contribution in question.



KAY R. H. EVANS
Assistant Attorney General

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