

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

May 17, 1979

P. R. Gingrow  
Assistant Executive Director  
Maine State Retirement System  
State Office Building  
Augusta, Maine 04333

Re: Group Life Insurance Coverage for Active Retired  
Justices and Judges.

Dear Mr. Gingrow:

Your memo of March 22, 1979, conveys the request of the Board of Trustees for an opinion as to whether 5 M.R.S.A. § 1151, et seq. is properly interpreted to include active retired justices and judges of the Supreme Judicial, Superior and District Courts among those who are eligible for full group life insurance coverage under § 1151. Such an interpretation would subject the active retired judiciary to the reductions set forth in § 1151(9) only upon retirement from judicial service without subsequent appointment as an active retired justice or judge. The question of the inclusion of the active retired judiciary has been put before the Board of Trustees. At its February 28, 1979, meeting, the Trustees unanimously adopted a motion "that the Board's rules and regulations be amended<sup>1/</sup> to grant active retired justices and judges continued life insurance coverage at the same level as when active, contingent upon approval by the Attorney General's Office of the statute interpretation (sic). . . . " Your opinion request reflects the contingency on which implementation of the motion depends.

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<sup>1/</sup> If this is a proper interpretation of § 1151, any resulting amendment of the Board's rules would require adoption pursuant to the Administrative Procedure Act, 5 M.R.S.A. §§ 8051-8.

Section 1151(1) provides:

"1. Eligibility. Except as provided herein, each appointive officer or employee of the State of Maine, or teacher, who is eligible for membership in the Maine State Retirement System, or each member of the State Police who is a member of the State Police Retirement System, including those members of that system who have retired since September 5, 1955 and are living on March 18, 1957, and Justices of the Supreme Judicial Court and the Superior Court and Judges of the District Court, shall at such time and under the conditions of eligibility as the board of trustees may by regulation prescribe, come within the purview of this section. . . . "

The first issue is whether the inclusion of the active retired judiciary is a "time" or "condition of eligibility" which the Board may establish by regulation or, rather, whether this group is covered by § 1151(1) only if it is among those groups which "come within the purview of this section." The former position is predicated on the proposition that the Legislature intended the Board of Trustees to have discretion to determine whether the group denominated in the statute by the phrase "the Justices of the Supreme Judicial Court and the Superior Court and Judges of the District Court" would include active retired justices and judges. The latter position requires resolution of the question of whether the Legislature intended that phrase to include the active retired judiciary.

The content of the Board's motion appears to reflect the view that inclusion of the active retired judiciary is a "time" or "condition of eligibility" and thus within the Board's regulatory discretion. In my opinion, the Board is in error. I conclude that inclusion of the active retired judiciary depends upon whether this group "comes within the purview" of § 1151. In other words, the proper question is whether the Legislature intended the phrase "Justices of the Supreme Judicial Court and the Superior Court and Judges of the District Court" to include active retired justices and judges.

I base this conclusion on the language of § 1151(1). In that subsection, the Legislature specified the groups which, "except as provided herein," "come within the purview of this section." Where the Legislature has expressly stated the statute's reach, it is to be presumed that the Legislature intended the statute to extend no further. Extension by administrative interpretation is impermissible

in these circumstances. Here, unless the specified group of justices and judges was intended by the Legislature to include the active retired judiciary, the active retired group is not within the statute. Further evidence that administrative inclusion of the active retired group is improper lies in the fact that the Legislature expressly included another retired group in § 1151(1) (" . . . including those members [of the State Police Retirement System] who have retired since September 5, 1955. . . . ").<sup>2/</sup> Thus it appears that "time" and "conditions of eligibility," which the Board may by regulation prescribe, are something other than groups which "come within the purview" of the statute; logically, such "time(s)" and "conditions" as the Board may establish apply only to those groups legislatively included in § 1151(1).

To resolve the question of whether the Legislature intended the specified group of justices and judges to encompass active retired justices and judges, we look first to the language of the Act. Unless there is an ambiguity therein, we need look no further. In re Belgrade Shores, Inc., 359 A.2d 59 (Me., 1976); Reggep v. Lunder Shoe Prods. Co., 241 A.2d 802 (Me., 1968). Section 1151(1) refers explicitly to justices and judges of the Supreme Judicial, Superior and District Courts;<sup>3/</sup> § 1151(2) uses the term "active service" in reference to all groups to whom the statute applies. In my opinion, these references do not give rise to an ambiguity but, rather, identify those justices and judges sitting in active service on the named courts. Furthermore, if the references are ambiguous, they are, in my opinion, properly interpreted to include only those justices and judges in active service.

I base these conclusions on the design of the retirement law, including the group life insurance provisions. The law generally does not extend full life insurance coverage under § 1151(1) and (2) to retired persons. Rather, retired insured persons receive coverage at the reducing rates specified in § 1151(9).<sup>4/</sup> In

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<sup>2/</sup> It is true that the coverage of retired State Police is at the reducing post-retirement levels. Nonetheless, when the Legislature intended to bring a retired group within the reach of the statute, it did so explicitly. See also § 1151(9), last paragraph.

<sup>3/</sup> As do §§ 1151(2)(A) and (B); 1151(7); and 1151(9)(A).

<sup>4/</sup> While § 1151(9) is not too happily drafted in application to the judicial group, it seems clear, in light of the group life insurance scheme as a whole, and in light of the fourth paragraph of § 1151(9)(A), that it applies to that group notwithstanding definitional problems with the terms "employee" and "service," and the general lack of clarity in the phrase "retires in accordance with this chapter." In any event, it has always been applied to this group.

addition, the retirement law in general does not make full life insurance coverage available to retired employees who return to service after retirement but continue to draw retirement benefits. In general, when a retired employee who is drawing a retirement benefit returns to service, his benefit is reduced according to a formula. 5 M.R.S.A. § 1123. As long as such employees continue to draw any portion of their retirement benefits, they are not eligible to become members of the Retirement System and thus are not eligible for full group life insurance under § 1151(1) and (2).

Where the Legislature has created an exception to these general patterns, it has done so expressly. See 5 M.R.S.A. § 1123, relating to legislative service after retirement. Since extension of full group life insurance coverage to active retired justices and judges would run counter to the general scheme of the statute and since the statute indicates that where such coverage is to be made available the Legislature uses express language to that effect, such extension should not be read into the statute without express language.

As a further indication of the need for express legislative authorization, we note that group life insurance coverage is generally available to regular State employees and teachers who are eligible for membership in the Retirement System. § 1151(1). The two other groups which are included are specifically named, i.e., "each member of the State Police who is a member of the State Police Retirement System, including those members of that system who have retired since September 5, 1955 and are living on March 18, 1957" and "Justices of the Supreme Judicial Court and the Superior Court and Judges of the District Court."<sup>5/</sup> The judicial group was added to the statute after the police group; thus, the statute then included the explicit reference to retired state police. In addition, the active retired judiciary had been created in two stages by P.L. 1923, c. 47 (active retired Supreme Judicial and Superior Court justices) and P.L. 1961, c. 386, § 9 (active retired District Court judges). The Legislature thus had before it in 1967 the statute containing an explicit reference to retired state police and may be presumed to have been aware of the existence of the active retired judiciary. In these circumstances, it would appear that had the Legislature intended to include the active retired judiciary in the scope of the provisions granting full group life insurance coverage, it would have done so explicitly.

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<sup>5/</sup> The police group was added by P.L. 1957, c. 38, the judicial group by P.L. 1967, c. 189. These groups are not eligible for membership in the Maine State Retirement System, 5 M.R.S.A. § 1001(10) (insofar as they are entitled to benefits under other specified retirement statutes). Hence the necessity of their specific inclusion under the group life insurance provisions.

The statutes governing the judiciary, 4 M.R.S.A. § 1, et seq., fully support the conclusion that the phrase "Justices and Judges of the Supreme Judicial Court and the Superior Court and Judges of the District Court" cannot be read to include the active retired judiciary. Under the judicial provisions, the active retired justices and judges constitute a separate and identifiable group not ordinarily encompassed within the group of active justices and judges. Explicit terms are used to refer to the active and active retired members of the judiciary,<sup>6/</sup> thereby indicating a legislative perception that the terms "justice" and "judge" have a different meaning than the terms "active retired justice" and "active retired judge."<sup>7/</sup> While the active retired justices and judges, upon appointment, "constitute a part of the court from which (they have) retired," 4 M.R.S.A. §§ 6, 102, 157-B, their status is distinguishable from that of the active judiciary. Perhaps the primary difference is that members of the active retired judiciary may exercise judicial authority only upon assignment or directive of the Chief Justice of the Supreme Judicial Court (§§ 6, 104) or the Chief Judge of the District Court (§ 157-B). This assignment or directive is no

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<sup>6/</sup> For instance, 4 M.R.S.A. § 6 provides:

"Any Justice of the Supreme Judicial Court, having terminated his service on said court under Section 5 shall be eligible for appointment as an Active Retired Justice of the Supreme Judicial Court as provided."

See also 4 M.R.S.A. §§ 104, 157-B.

<sup>7/</sup> Where the Legislature has given the active retired judiciary the same status as the active judiciary, it has done so explicitly. See, e.g., 4 M.R.S.A. § 6:

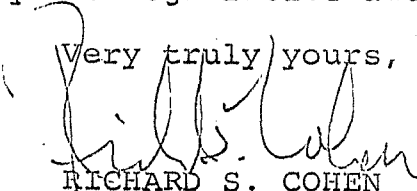
". . . such (Active Retired) Justice so appointed and designated shall thereupon constitute a part of the court from which he has retired and shall have the same restrictions therein as before retirement, except that he shall act only in such cases and matters and hold court only at such terms and times as he may be directed and assigned to by the Chief Justice."

See also 4 M.R.S.A. §§ 104, 157-B.

mere administrative allocation of judicial resources, as the assignments of active justices and judges may be said to be; rather, without such assignment or directive, the active retired justice or judge may not exercise judicial authority.<sup>8/</sup>

In light of the above, it does not appear that § 1151 may be interpreted to include the active retired judiciary among the group designated "Justices of the Supreme Judicial Court and Superior Court and Judges of the District Court." Accordingly, extension of full group life insurance coverage under § 1151(1) and (2) to this group would require legislative authorization.

Very truly yours,

  
RICHARD S. COHEN  
Attorney General

RSC/ec

cc: Honorable Armand A. Dufresne, Jr.  
Honorable Roland J. Poulin  
Honorable Paul A. MacDonald  
Honorable Simon Spill

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<sup>8/</sup> In other, more minor ways, the statute treats the active retired judiciary as a separate group. Separate provisions govern pay and appointment §§ 5, 6, 103, 104, 157-A, 157-B; within the group, active retired District Court judges are specifically limited to "compensation on retirement" as compensation and are also specifically to be reimbursed for expenses. § 157-B.