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DEPARTMENT OF THE ATTORNEY GENERAL
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September 10, 1979

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

Re: Retirement Benefit for Former Law Enforcement Officer (2nd retirement, after restoration to service)

Dear Phil:

You have asked for an opinion regarding the method of computing the retirement benefit of an individual who retired after 20 years as a member of the State Police, subsequently returned to service as an instructor at Southern Maine Vocational-Technical Institute (SMVTI) and now contemplates second retirement. You note that, upon his first retirement, he drew a retirement benefit under 5 M.R.S.A. § 1121(1)(C). That benefit was eliminated on his return to service.[1/] His benefit at point of second retirement would be computed under § 1121(2).

You have asked whether the benefit on second retirement is to be computed in two parts, one derived from his State Police service and the other fron his SMVTI service, or whether it is to be computed on the basis of the provisions governing the second retirement, applied to the combined total of his two periods of service.

1/ In accordance with 5 M.R.S.A. § 1123, 3rd sentence, as in force prior to its amendment by P.L. 1979, c. 92 and c. 200. These amendments appear to conflict, but neither is relevant to this point, nor to the question you have raised.

The relevant statutory provision is 5 M.R.S.A. § 1123, which provides that a member restored to service under the conditions present in this situation[2] shall upon subsequent retirement

> ". . . receive such combined benefits as may be computed on his entire creditable service and in accordance with the then existing law."

The clause was enacted in substantially this form by P.L. 1955, c. 417, § 8.[3]

We interpret this clause to mean that the benefit on subsequent retirement is to be computed on the basis of the provisions of the retirement law governing the subsequent retirement, applied to the total number of years of creditable service earned in both periods of covered employment.[4] This conclusion is based on a comparison of the wording of this clause with a clause in the prior sentence which also relates to computation of benefits on a second (or subsequent) retirement, under different conditions.[5] That clause clearly directs that the computation of the subsequent benefit is, under certain circumstances, to be made in two parts, one related to service prior to the first retirement and one related to service on return to membership. This language was re-enacted simultaneously with the

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2/ That is, the original retirement was non-disability and those benefits were eliminated on return to service. In addition, we would note that the employer during both employments was the State, and thus there is no issue of by whom the benefit is to be paid.

3/ Chapter 417 was enacted without debate. There is no Statement of Fact on the original L.D. (92) or the New Draft (1432).

4/ Or in all such periods, if more than two.

5/ The comparison clause is applicable to disability retirees restored to service and membership and subsequently re=retiring.

clause here relevant.[6/] Thus it appears that when the Legislature intended the computation to be made in two parts, it clearly so directed. In light of this, it would appear that the somewhat ambiguous language of the clause in question is properly interpreted to mean that a benefit on second retirement, in the situation you describe, is to be computed by applying the retirement provision applicable at point of second retirement to the total number of years of creditable service earned while in covered employment.

Very truly yours,

Kay R H Evans

KAY R. H. EVANS
Assistant Attorney General

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6/ It should be noted that c. 417 substantially changed the prior version of this provision by separating the treatment of disability and non-disability retirees restored to service. As originally enacted and until the passage of c. 417, disability and "any other beneficiary" restored to service were treated together for purposes of benefit computation on subsequent retirement. In this prior version, as in the present version, the two-part computation was made in certain circumstances (i.e., return to service after age 55) and served as a limitation on the amount of the benefit in those circumstances. In the present version, that limitation and thus the two-part computation apply to disability retirees only.

An amendment enacted by P.L. 1963, c. 372, changed the circumstances under which the two-part computation is to be made in order to limit the subsequent benefit. The age-55 factor was eliminated; it was replaced by a less-than-two-years-of-service factor. In this amendment, the Legislature stated the "single computation" concept in a very different way (". . . his subsequent retirement allowance shall be as provided in section 6.") Then-§ 6 of c. 64, R.S. 1954 corresponds to present 5 M.R.S.A. § 1121, the regular retirement benefit-computation section.