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September 11, 1979

W. G. Blodgett, Executive Director
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Augusta, Maine 04333

Re: Benefit Entitlement of Individuals with Creditable Service under more than One Employer: Opinion #3[1/]

Dear Bill:

You have inquired further about the copmutation of benefits for members with creditable service under more than one employer. The specific question is whether a particular combination of periods of creditable service earned with two employers renders a member eligible for a minimum benefit. You have described the factual sitaution as follows: A prospective retiree has earned nine years of creditable service as a teacher prior to 1947 and more than two years of creditable service as an employee of a local district. The local district has a minimum-benefit provision for 10 years of service; this provision has been in the district's retirement plan during the entire time that the member has worked there. While a minimum-benefit provision for 10 years of service now attaches to service as a teacher, such a provision was not part of the retirement plan for teachers during the time the member served as a teacher.

You have asked whether the member is now eligible for a minimum benefit[2/] or whether she has, on ten years of service,

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1/ Opinions dated September 16, 1977 and 2nd opinion dated September 11, 1979 deal with other aspects of this question.

2/ Computed and charged to the two employers according to our opinion of September 16, 1977.

simply acquired a vested right. In the latter case, the benefit would be computed in two parts, each part computed on the basis of the years of service, average final compensation and benefit factor in effect for each employment at the time the member terminated that employment, without regard to any minimum benefit.

The statute is 5 M.R.S.A. § 1092(11), which provides in relevant part that members shall

> ". . . upon subsequent re-employment as such an employee but with a new employer, provided he shall not have previously withdrawn his accumulated contributions, thereupon have his membership transferred to his account with his new employer, and shall be entitled to all benefits based on creditable service and earnable compensation with the previous employer and the provisions of this chapter in effect with respect to the previous employer at the date of termination of service by the member. . . . "

In my opinion, the latter interpretation is correct. In these circumstances, the member has acquired a vested right but is not eligible for a minimum benefit, because a minimum benefit provision was not ". . . in effect with respect to the previous employer (here, the member's employer during her employment as a teacher) at the date of termination of service by the member."3/ Because no such provision was then in effect with respect to that employment, the nine years of creditable service earned does not count toward eligibility for a minimum benefit.

This interpretation is consistent with our opinion of September 16, 1977, in which we stated, albeit not with overwhelming clarity, that creditable service counted toward a minimum benefit under three conditions: 1) that the service was earned in employment covered during the entire period of the employment by a minimum benefit provision (see Opinion of September 16, 1977, pp. 1, 2-3), or 2) that the employer adopted a minimum benefit provision prior to the member's termination of service, so that creditable service earned under that employer prior to and after the adoption of the provision counts toward a minimum benefit (see Id., p. 2, fn. 2), or 3) a subsequent

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3/ "Termination of service" clearly refers to termination of service with the previous employer, not to termination on retirement.

employer with a minimum benefit provision agrees to purchase a member's creditable service earned in employment with no minimum benefit; that creditable service then counts toward eligibility for the subsequent employer's minimum benefit[4] (see Id., p. 3, fn. 5). None of these conditions is present in the situation you describe.

I hope this response is helpful to you.

Very truly yours,

Kay R. H. Evans

KAY R. H. EVANS
Assistant Attorney General

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