

MAINE STATE LEGISLATURE

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November 8, 1979

Honorable Edward Stern
Justice, Superior Court
Penobscot County Courthouse
Bangor, Maine 04401

Dear Justice Stern:

We take this opportunity to respond to your request for an opinion from this office, dated September 17, 1979, regarding whether your right to retirement benefits would be jeopardized if you were to hold over as an Active Justice, pursuant to Me. Const., art. VI, § 4, beyond the time limit stipulated in 4 M.R.S.A. § 103.

We understand that you are presently in your first term on the Superior Court, which term will end on December 20, 1979, and that your 71st birthday occurred on January 31, 1979. While ordinarily a Superior Court Justice would be required to retire by the time of his 71st birthday in order to receive retirement benefits, you are entitled to finish out your first term for purposes of retirement pursuant to 4 M.R.S.A. §103. Your question is whether, if you continue as an Active Justice for an additional six months or until your successor is appointed, whichever occurs first, under Me. Const., art. VI, § 4, you will still be eligible for the benefits provided for in § 103. We answer that question in the affirmative.

Article VI, § 4 of the Maine Constitution provides, in pertinent part, that

All judicial officers shall hold their offices for the term of 7 years from the time of their respective appointment. . . ; provided, however, that a judicial officer whose term of office has expired and who has reached mandatory retirement age, as provided by statute, may continue to hold office until the expiration of an additional period not to exceed 6 months or until his successor is appointed, whichever occurs first in time.

Me. Const., art. VI, § 4.

The apparent effect of this provision is to allow a judicial appointee to "hold over" beyond the end of his normal term for six months or until his successor is appointed, whichever occurs earlier. The statute in question, 4 M.R.S.A. § 103, provides that a Justice of the Superior Court may, after attaining the age of 70 years and after having served as a Justice or Judge on the Superior or District Court for at least seven years, or after attaining the age of 65 and having served on either bench for a total of 12 years, retire at three-quarters salary. The statute also provides as follows:

* * * Such justice shall terminate his services before his 71st birthday, except that a justice who is serving his first term of judicial office which can be credited for the purpose of qualifying for compensation upon retirement may serve for the remainder of that single term beyond his 71st birthday. Any justice who continues to serve until or after his 71st birthday, except a justice who is serving his first term of judicial office which can be credited for the purpose of qualifying for compensation upon retirement, shall waive his right to the compensation mentioned and make no claim therefor after termination of his service.

4 M.R.S.A. § 103.

Thus, a Justice must retire prior to his 71st birthday (or, if he is serving his first term for purposes of retirement, at the end of that term) in order to receive retirement benefits. In either case, a Justice forfeits his retirement benefits should he continue beyond the end of his seven-year term. Thus, the essential problem is to attempt to reconcile the hold over provisions of Me. Const., art. VI, § 4 with that portion of 4 M.R.S.A. § 103 which appears to penalize a Justice of the Superior Court who continues to serve.

Because the statute and constitutional provision in question deal with two different facets of judicial office, the one with benefits upon retirement and the other with the length of judicial terms, they could logically be read together. The result would be that Justices entitled to retire, either by virtue of age or the end of their terms, who elected to hold over under art. VI, § 4 would waive all retirement benefits. Beyond the fact that it exacts an extremely harsh penalty from one who is essentially providing a further service to the State, this result undercuts the intent underlying the Legislature's proposal of the constitutional amendment by providing a strong incentive for judges not to hold over pursuant to art. VI, § 4.

A brief review of the legislative history of the resolution proposing the amendment which created the hold over provision reveals that its purpose was to facilitate Senate confirmation of judicial appointees. A Communication (H.P. 2038) comprised of the Report of the Judiciary Committee dealing with the consequences of the abolition of the Executive Council as the confirmatory body for judicial appointments clearly shows that the reason for the adoption of the six-month hold over provision was to make Senate confirmation of judicial appointments feasible. The previous language of art. VI, § 4, providing for a 7-year term and "no longer," was therefore changed to provide for a six-month extension because the Senate is not always in session. To read § 103 as requiring "hold over" Justices to forfeit retirement benefits clearly disserves the end of encouraging such hold overs.

The more reasonable result, in light of the evident legislative intent, is to view the ratification of the "hold over" amendment by the electorate as having modified § 103 so that Justices who might have retired, under that section, prior to their 71st birthday or at the end of their first qualifying term, will not forfeit retirement benefits if they elect to continue to serve under art. VI, § 4. It is reasonable to assume that a person voting on this proposed constitutional amendment would not have expected that a consequence of allowing a judge to hold over would be the forfeiture of that judge's retirement benefits. Indeed, it is clear that the Legislature had this problem in mind when it proposed the relevant resolution. The above-mentioned Committee Report specifically stated that: "[p]rovision should also be made so that Judges due to retire who hold over under these [new] provisions do not jeopardize their retirement benefits." 1 Me. Leg. Rec. 143 (1974). In light of the Legislature's failure to amend § 103 specifically to accord with the constitutional amendment, it must be assumed that the Legislature viewed the amendment of art. VI, § 4 as sufficient to protect judicial retirement benefits.

As noted above, the specific waiver provisions of § 103 and the actual language of the amendment to art. VI, § 4 are not logically inconsistent. A judge electing to hold over could be required to forego his retirement benefits. The existence of language in the amendment to § 4 alluding to a "mandatory retirement age," however, suggests that the drafters had the provisions of § 103 in mind when the amendment was drafted and therefore that the two provisions must be reconciled

by the modification suggested above. It might be argued that § 103 does not create a mandatory retirement age but merely dictates certain consequences of non-retirement and therefore that there is no inherent conflict between § 103 and art. VI, § 4.^{1/} This line of reasoning ignores the total absence of any other statutes setting retirement age for Superior Court Justices. Further, the language of § 103, while not creating an actual mandatory retirement age, attaches such a severe penalty to non-retirement that the effect of the law is to provide a strong impetus for retirement.^{2/} Hence, it appears quite clear that the intent of the drafters of the amendment to § 4 was to allow judges invoking it to retain their right to retirement benefits.

That article VI, § 4 itself establishes the term of judicial officers covered by it further supports our conclusion, since the amendment to § 4 in effect constitutes an extension of those terms. It follows that Justices who elect to extend their terms were intended to be treated, for all purposes including retirement, in the same way as those in the first seven years of their term.

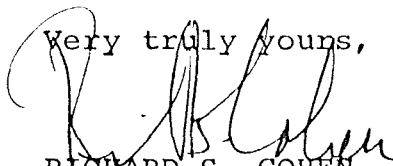
In summary, we conclude that, in light of its evident purpose, its language, the underlying legislative intent, and the consequences of a contrary interpretation, Me. Const., art. VI, § 4 has the effect of extending the term of a Justice who elects to hold over under it. The "hold over" Justice remains in the same position as one in his regular term for all purposes, including retirement benefits, and the Justice holding over therefore does not waive any right to retirement benefits. Thus, you may elect to hold over, under art. VI, § 4, beyond the end of your term on December 20, 1979, for a maximum of 6 months without jeopardizing your retirement benefits under 4 M.R.S.A. § 103.

^{1/} Amendment of § 4 of article VI was approved by the voters in November, 1976, while similar language to that of § 103, mandating retirement at a given age and waiving benefits in the event of service beyond that time, was adopted by the Legislature in 1911. P.L. 1911, c. 198. Thus, it cannot be argued that the adoption of the latter had any connection with the approval of the former.

^{2/} It might also be noted that there might be a constitutional bar to the Legislature's enactment, by statute, of a mandatory retirement age for judges inasmuch as their terms are set by the State Constitution. Thus, by § 103, the Legislature has probably gone as far as it can legitimately go in "requiring" judicial retirement.

I hope this information addresses the concerns voiced in your request. If you have any further questions, please feel free to contact this office.

Very truly yours,



RICHARD S. COHEN
Attorney General

RSC/ec

cc: John Duffy,
State Court Administrator