

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

80-35

RICHARD S. COHEN
ATTORNEY GENERAL



STEPHEN L. DIAMOND
JOHN S. GLEASON
JOHN M. R. PATERSON
ROBERT J. STOLT
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

February 14, 1980

Honorable John L. Tuttle, Jr.
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Tuttle:

You have requested an opinion from this office regarding the constitutionality of L.D. 1774, from the standpoint of its effect on the collective bargaining process for public employees, 26 M.R.S.A. §§ 961-74, and from the standpoint of its effect on the Retirement System law, 5 M.R.S.A. § 1001, et seq. You have also asked whether L.D. 1774 conflicts with federal pension laws. We find no problem with this bill in any of these three respects.

L.D. 1774 proposes to give municipalities which now afford special retirement benefits to their police and firemen the option to discontinue offering those benefits to officers hired after the effective date of the proposed statute and to substitute for such benefits any other benefit plan available to municipalities as participating local districts under the Retirement System statute.^{1/} A nearly identical statute covering some participating districts was passed in the last session, P.L. 1979, c. 77, and L.D. 1774 apparently has the purpose of extending this option to all participating local districts.

We shall consider the questions presented by this request in reverse order, for purposes of analysis. We deem your request on the issue of conflict with federal pension laws to be seeking an opinion on the question of whether L.D. 1774, if enacted, will

^{1/} It should be noted that the procedure for authorizing such discontinuance is not specifically set out in L.D. 1774 and is therefore somewhat unclear.

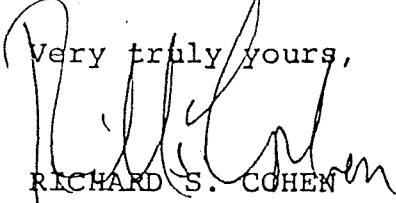
conflict with the federal ERISA statute, so-called, which regulates certain pension plans. Our review of that statute indicates that plans of a governmental nature, such as the one which L.D. 1774 proposes to amend, are not governed by ERISA and therefore that there is no potential conflict between the two. See 29 U.S.C. § 1003(6)(1).

There is also no constitutional deficiency in L.D. 1774 from the point of view of the right of public employees to bargain collectively. This right, in Maine, unlike other states, is not of constitutional stature. It is a right whose basis is wholly statutory and whose limits are entirely described by statute. As stated by the Maine Supreme Judicial Court, "Except as authorized by statute, public employees have no right to bargain collectively with the employing agency." Churchill v. S.A.D. #49 Teachers Association, 380 A.2d 186, 191 (Me. 1977). L.D. 1774 cannot unconstitutionally conflict with a constitutional right which does not exist in this state.

We find no constitutional violation in treating, for purposes of retirement benefits, newly hired employees differently from current employees and retirees. Assuming, for purposes of analysis, that a right to a certain set of retirement benefits exists,^{2/} the earliest possible event at which a constitutionally cognizable right could attach would be at the time of employment, since such a right has been viewed as contractual in nature and therefore cannot attach prior to the creation of a contractual relationship. See, e.g., Opinion of the Justices, 303 N.E.2d 320, 331 (Mass. 1973). Hence, we see no potential violation of such a right if L.D. 1774 has the effect of diminishing available retirement benefits for newly hired employees only.^{3/}

We hope this opinion addresses your concerns. If you have any further questions, please feel free to contact this office.

Very truly yours,


RICHARD S. COHEN
Attorney General

RSC/ec

^{2/} We express no opinion on the issue of whether, under Maine law, there is a constitutionally cognizable right to retirement benefits. We merely assume such a right for purposes of analysis.

^{3/} The initial draft of L.D. 1774 raised the problem of a possible conflict between it and the Maine Municipal Public Employees Labor Relations law, 26 M.R.S.A. §§ 961-74. A subsequent amendment, specifically addressing this question, has, in our view, resolved any problem of conflict between the two measures which might have arisen.