80-140-1

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AUGUSTA, MAINE 04333

October 6, 1980

W. G. Blodgett, Executive Director
Maine State Retirement System
State House
Augusta, Maine 04333

Re: Reporting Requirements for CETA Trainees.

Dear Bill:

You have requested an opinion of this office concerning reporting requirements of participating local districts for CETA trainees employed by these districts and concerning the eligibility of former CETA trainees now permanently employed in participating local districts.

I. Reporting Requirements for Participating Local Districts Relating to CETA Trainees.

You first ask us to determine the propriety of requiring specific participating local districts of the Maine State Retirement System to submit separate payroll reports to the System for CETA employees even though, as we understand it, for purposes of the administration of the CETA Program, these employees are formally employed by a different entity, the "prime sponsor." For example, as we understand this problem, the "prime sponsor" for CETA purposes of a particular participant might be the City of Auburn, while the participant is assigned for actual employment to the Auburn Public Library. Under the Retirement System statute, both the City of Auburn and the Auburn Public Library are participating local districts. Your question is whether it is proper to require participating local districts, rather than the "prime sponsors," to report the payrolls of the CETA participants.

We answer your question in the affirmative. Essentially, we arrive at this conclusion because we find no authority to the contrary in the statutes governing the Maine State Retirement System or in the Federal regulations governing the application of the state retirement laws to CETA trainees. The Board of Trustees has the general authority under 5 M.R.S.A. § 1092(6) to require the chief fiscal officer of a participating local district to submit information with respect to the employees of that district. The word "employee" is

defined in the retirement statute, 5 M.R.S.A. § 1001(10), but it is obvious that the use of that term in sub-§ 6 of § 1092 is not limited by that definition. Section 1092 recognizes a distinction between employees of participating local districts and employees of the State as defined in § 1001. See 5 M.R.S.A. § 1092(11). Thus, it can be inferred that the term "employee" has a more general meaning as used in sub-§ 6 of § 1092 and may be applied to include CETA trainees. Hence, the Board of Trustees has the general power to require reporting by the participating local districts of payroll information concerning CETA trainees and, in the absence of any conflicting federal regulations, it is our opinion that the proposed method of reporting that information is proper.

II. Whether Former CETA Employees are Entitled to Receive Prior Service Credit towards Retirement for the Time They Were Employed by CETA.

We now reach the more difficult problem posed in your second memo. The issue, as we understand it, arises when a former CETA employee of one participating local district of the Retirement System becomes a non-CETA employee of a different participating local district, where the CETA "prime sponsor" has administrative jurisdiction for CETA purposes over both participating local districts. The question is whether the time spent by the employee as a CETA trainee with the different local district qualifies as prior service credit under the Retirement System statute. We answer this question in the negative. By statute, the qualification of CETA training periods for prior service credit under our system is limited to the situation in which the employee is employed by the same participating local district both during and after his CETA training period.

In relevant part, 5 M.R.S.A. § 1092-A(4)(A) reads as follows:

> 4. Credit for CETA service.
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> Credit for the period of CETA employment occurring after June 30, 1979, shall be granted to any person who, after June 30, 1979, was a CETA employee; and
>
> A. Within 90 days of termination of CETA employment became a non-CETA employee of the employer . . . .
>
> 5 M.R.S.A. § 1092-A(4)(A) (emphasis added).

"Employer" is defined in § 1092-A(1)(C) as "the State or participating local district with which the CETA employee is placed for training and employment." Taking these two parts of the statute together, it appears that the Legislature intended to limit the

availability of prior service credit for CETA employees to the situation in which the former CETA employee becomes employed as a non-CETA employee with the same participating local district by which he was employed under CETA. Thus, the concept of the "prime sponsor," as defined in § 1092, is irrelevant to the transferability of prior service. The fact that a former CETA employee remains within the jurisdiction of the same prime sponsor when he becomes a permanent employee has no bearing on whether he is entitled to prior service credit for his CETA time. The distinction between the definitions of "employer" and "prime sponsor" found in this section further support this conclusion. Compare § 1092-A(1)(B) with § 1092-A(1)(C). Thus, credit for prior service is available only if the former CETA employee remains, after his CETA employment, with the same participating local district by which he was employed as a CETA trainee. The federal regulations governing the availability of CETA funds for use as employer contributions to retirement plans also appear to contemplate this "same employer" requirement. 20 C.F.R. 676.28-2(e)(1)(i). While the provisions governing transferability of prior service for non-CETA employees in the Retirement System generally permits such transfer liberally, see 5 M.R.S.A. § 1092(11), the statute in question is not ambiguous in establishing an exception to this liberal rule and does not admit of a broader interpretation.

To reiterate, we conclude that a former CETA employee is entitled to prior service credit for retirmenet purposes for his CETA employment period only if he is re-employed, in a non-CETA capacity, by the same participating local district for which he worked as a CETA trainee. If he is re-employed by a different local district, even if it is within the jurisdiction of the same "prime sponsor" as the employee's originally employing CETA local district, his previous service is not transferable.

We hope this opinion resolves the issues presented by your memoranda. If you have any further questions, please feel free to contact this office.

Very truly yours,

PAUL F. MACRI
Assistant Attorney General

PFM:jg

cc: Jane Weed, Director
State Employment and
Training Council