81-21

STATE OF MAINE

Inter-Departmental Memorandum Date February 20, 1981

To Philip Gingrow, Asst. Exec. Dir. Dept. Retirement System

From Paul F. Macri, Assistant Dept. Attorney General

Subject Computation of Military Service Credit for State Police Retirees Retired Prior to July 1, 1976

Your memo on this subject describes a problem in computing the retirement benefits of State Police officers retired under §1121(1)(C)[1/] prior to July 1, 1976 who are seeking additional credit for military service under §1094(13). A preliminary issue, however, is whether such officers are entitled to this credit. An opinion of this office dated September 8, 1978, concluded that, after the enactment of P.L. 1975, c. 622, military credits under §1094(13) were available to persons already retired under the special plan covering State Prison guards. Having reviewed the legislative history of §1094(13) and of the State Police special plan, including the history of P.L. 1975, c. 622, §41, we conclude that the reasoning put forth in that opinion is equally applicable to the State Police plan and that State Police officers retired prior to July 1, 1976 are indeed entitled to purchase military credit under §1094(13).

We further conclude that your current method of computing retirement allowances under special plans with military credit under §1094(13) is consistent with §1121(1)(C) as amended by P.L. 1975, c. 622, §41. As I understand it, the present method is to add to the current retirement benefit, which is based on the retiree's final salary year, an amount representing 2% of what would have been his average final compensation, had he retired after July 1, 1976, for each creditable year of military service. This is consistent with the specific language of §1121(1)(C) as amended, which provides that a State Police officer may receive, as part of his retirement allowance,

> an additional 2 percent of his average final compensation for each year of membership service not included in determining eligibility for retirement under this paragraph.

The alternative method which has been suggested is to base the entire retirement benefit on average final compensation by recomputing the basic benefit on the basis of the retiree's three highest years and adding to that the 2% of the average final compensation per year for military service. The argument supporting the second method is apparently that it would be more logically consistent because the 2% addition to §1121(1)(C) was added at the same time that "average final compensation" was substituted for "current annual salary." See P.L. 1975, c. 622, §41.

We do not find this argument persuasive as regards the applicability of the 2% provisions to persons already retired at the time of the enactment of Chapter 622. Nothing in the legislative history

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1/ All statutory references unless otherwise noted are to Title 5, M.R.S.A.

of Chapter 622 indicates that the Legislature intended that persons already retired would have to have their entire benefit recomputed on an average final compensation basis in order to qualify for the additional 2%.[2/] In the absence of such indication, we cannot read such a change into the statute where the language apparently directs a different result.

The 1978 opinion, cited above, clearly establishes that notwithstanding the generally prospective effect of the 2% provisions, as to military credits they do apply to persons retired prior to the effective date of Chapter 622. We think that your approach, which combines the "current annual salary" basis under which those persons retired with 2% of average final compensation, as dictated by c. 622, is a rational and acceptable one. In situations such as this, where the statutory language and history are less than clear, we reiterate the thought found in prior opinion that the Retirement System has some latitude in interpreting the statute. This is especially true where, as here, the interpretation has been applied over a substantial period of time and a change would result in significant administrative problems. When there is no clear legal answer to a given question, weight should be given to a reasonable administrative interpretation.

We hope this answers the question posed. If you have further questions, please feel free to contact this office.

PAUL F. MACRI
Assistant Attorney General

PFM:jg

cc: Mr. Robert Towne, Actuary

2/ Indeed, as a practical matter such an option is illusory if the benefit after recomputation is substantially equal to the original benefit without the additional 2%.