81-26

STATE OF MAINE

Inter-Departmental Memorandum Date March 9, 1981

To W. G. Blodgett, Executive Director Dept. Maine State Retirement System

From Paul F. Macri, Assistant Dept. Attorney General

Subject

Bill:

You have asked me to informally examine the question of whether it is permissible to change beneficiaries under § 1126(2)[1/] options 2 through 4, after the commencement of the retirement allowance. These options provide for a retirement allowance to the retiree and a benefit to a beneficiary, should he or she survive the retiree. We understand that the System currently does not allow such changes, and we believe that that practice is consistent with the statute. In the absence of contrary legislative history, of which there is none, we would uphold the established administrative practice of the System.

Two portions of the statutory language support the System's interpretation. Section 1126(2) reads, in pertinent part:

> . . . Any option may be elected at any time prior to the commencement of payment of a service retirement allowance . . . . Such an election may be revoked by the member by written notice to the executive director at any time prior to commencement or payment of the service retirement allowance.
>
> [Emphasis supplied]

The language describing options 2 through 4 states that a beneficiary's name under these options must be "filed with the executive director at the time of retirement . . . ." § 1126(2) [emphasis supplied]. Neither portion of the statute provides a mechanism for changing either the elected option or beneficiary. It can be inferred that the Legislature did not contemplate the possibility of changes after the retirement allowance became effective.

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

There is also a basis in policy for not permitting changes in beneficiaries under options 2, 3 and 4. When any of those options is elected, the benefit for both retireee and beneficiary must be actuarially determined. Each change in beneficiaries would require a new determination and a consequent change in the retirement allowance and benefit to the beneficiary. While this might not be difficult for each given change, in the aggregate, it might become burdensome. Further, in the event the designated beneficiary predeceases the retiree and a change is allowed, the System will almost certainly pay out more than it would have if no substitution were allowed.

For these reasons, we think that the practice currently followed by the System of not permitting changes in beneficiaries after the allowance has begun represents a reasonable and supportable interpretation of the statute. We understand that this practice may mandate a harsh result in the situation where, for example, the retiree and the named beneficiary are divorced after the commencement of the retirement allowance. This problem, however, is more appropriately handled by legislation.

PAUL F. MACRI
Assistant Attorney General

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