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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

April 2, 1981

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

Dear Mr. Blodgett:

You have requested this office to issue an opinion regarding the transferability of credit among participating local districts ("p.l.d.'s") with special benefit plans. The specific question posed is whether an employee of a p.l.d. with 17 years of service under a 20-year/1/2 pay plan (under § 1092(3))[1] may employ that credit toward a 25-year/2/3 pay plan (under § 1121(8)) in another district.[2] We conclude that he may not transfer the creditable service automatically but that the new employer may accept the prior time in fulfilling the new plan by agreeing to pay the additional costs which will be generated by so doing.

This problem is controlled by § 1092(11), which reads in pertinent part as follows:

> Any member of the retirement system whose service is terminated as an employee, either as defined in section 1001 or as an employee of a participating local district, shall, upon subsequent reemployment as such an employee but with a new employer, provided he shall not have previously withdrawn his accumulated contributions, thereupon have his membership transferred to his account with his new employer, and shall be entitled to

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

2/ We assume this member has not withdrawn his contributions.

> all benefits based on creditable service and earnable compensation with the previous employer and the provisions of this chapter in effect with respect to the previous employer at the date of termination of service by the member, which do not require additional contributions by the new employer. The new employer may elect to include the creditable service and earnable compensation with the previous employer with the creditable service and earnable compensation with the new employer, and shall then make such contributions, from time to time, as may be necessary to provide the benefits under the retirement system for the member as have accrued to him by reason of his previous employment and may accrue to him by reason of his new employment. All funds in the retirement system contributed by his former employer on account of his previous employment shall be transferred to the account of the new employer and shall be used to liquidate the liability incurred by reason of such previous employment.
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> (Emphasis added)

This language describes, in a reasonably clear manner, what happens in a situation such as the one posed. The employee retains any credits earned with the prior employer to the extent that they entitle him to specific, identifiable benefits, such as, for example, a minimum benefit after a certain number of years.

Here, however, a different situation is presented. The member has not earned any minimum benefit under his previous special plan because that plan, like most special plans which offer higher benefits after a limited amount of service, does not have a minimum vesting requirement. The special benefit plans offered under the Maine State Retirement System statute appear to contemplate strict compliance with the term of service requirement as a condition to receiving benefits.

In some instances, such as the one presented, however, to require such strict compliance with each local plan would work a hardship on persons transferring between or among districts by redering valueless their previous service for purposes of meeting

the requirements of the new employer's special plan. We think this is a situation in which the Legislature intended that the rule set out in § 1092(11) apply. Since it appears to apply by its specific terms to all plans available under the Maine State Retirement System, we see no reason to make an exception for special plans. We therefore conclude that credits earned under a previous employer's special plan are transferable to a new employer with a different plan but only if the new employer is willing to absorb the difference in cost between the old plan and the new plan for the years already served and the full cost for the time served under the new plan.

If you have any further questions, please feel free to contact this office.

Very truly yours,

PAUL F. MACRI
Assistant Attorney General

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