

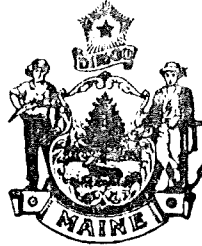
MAINE STATE LEGISLATURE

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)

JAMES E. TIERNEY
ATTORNEY GENERAL



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

June 22, 1981

Philip R. Gingrow
Assistant Executive Director
Maine State Retirement System
State House
Augusta, Maine 04333

Re: Changes in Provisions of Maine Maritime Academy Plan.

Dear Mr. Gingrow:

You have requested an opinion regarding the propriety of a proposed change in the retirement plan of the Maine Maritime Academy (the "Academy"). The Academy originally provided a special retirement plan under § 1092(3)^{1/} providing for one-half average final compensation after 25 years of service for all of its employees. In addition, the benefits of the then current "standard" plan were available to those persons who failed to fulfill the requirements of the second plan that provided a benefit of 1/60th of the average final compensation per year of creditable service with a minimum benefit, after 10 years of service, of \$80 per month.^{2/}

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

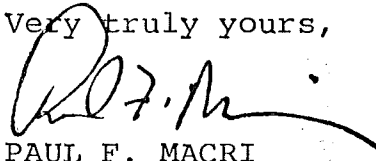
2/ While the Maine State Retirement System statutes does not explicitly establish that persons subject to special plans, such as State Police officers, are also covered by the basic employee plan, the implication of the language creating both special and basic plans is that persons who are unable to fulfill the conditions of the special plans may take advantage of the basic plan. For example, § 1121(1)(C), which creates the special State Police plan, permissively states that a member of the State Police "may" retire under that plan. Nonetheless, the basic plan is also applicable to all "members" of the Retirement System. "Member" is defined as "any employee," § 1001(12), and "employee" is defined in pertinent part as "any regular classified or unclassified officer or employee in a department. . . ." § 1001(10).

At some point, the Academy, by vote of its Board of Trustees, pursuant to § 1092(3), ¶2, discontinued the special plan for newly hired employees and upgraded the "standard" retirement plan to the 1/50th of average final compensation/\$100 per month minimum provided under P.L. 1973, c. 542 as the standard plan for state employees and teachers. This action resulted in the co-existence of two different plans for the Academy: one for persons employed there at the time of change (special plan and prior standard plan) and one for employees hired on or after the date of change (current standard plan). The question now posed is whether the Academy may adopt the current standard plan as the underlying plan for the first group of employees while retaining the special plan for them.

We answer in the affirmative. The only issue which might be raised is that the Academy's action perpetuates a differing treatment of two different classes of employees. See Opinion of the Attorney General, February 6, 1978 (copy attached). The amendment of the Academy's plan which originally created the two classes of employees was specifically authorized by § 1092(3), 2nd ¶, and was therefore proper even under our previous opinions. The effect of the Academy's action to adopt the current standard plan for the class of employees who were employed by the Academy prior to the original change is in fact to treat the two classes more equally than before. Under the second paragraph of § 1092(3), the adoption of the current standard plan for new employees only was proper. Since the Academy never did adopt these provisions for its then current employees, it may now do so pursuant to § 1092(12). In answer to your other question, all employees should now contribute at the rate of 6.5% of salary.

We hope that this answer addresses your concerns. Please feel free to contact me if you have any further questions.

Very truly yours,



PAUL F. MACRI
Assistant Attorney General

PFM/ec

cc: Captain Robert Flenner
Maine Maritime Academy