

MAINE STATE LEGISLATURE

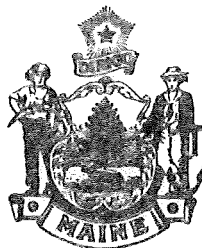
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JAMES E. TIERNEY
ATTORNEY GENERAL



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

July 1, 1981

Honorable Sidney W. Wernick
Associate Justice
Supreme Judicial Court of Maine
142 Federal Street
Portland, ME 04112

Dear Justice Wernick:

You have requested an opinion from this office interpreting the word "dependent" as it is used in 4 M.R.S.A. §5. The relevant language is as follows:

If such justice dies having terminated his or her service and having become entitled to compensation as provided in this section, his or her surviving spouse, as long as he or she is not the dependent of another person, or if he or she leaves no surviving spouse, or at his or her death or at the time he or she becomes the dependent of another person, then his or her child or children under the age of 18 years and until they respectively reach their 18th birthday, shall annually be entitled to 3/8 of the currently effective annual salary of a Justice or Chief Justice of the Supreme Judicial Court, as the case may be.

[Emphasis Added.]¹

The intent of this language is to limit the payment of survivor benefits to those widows and widowers of retired justices who are not dependent upon others for their support.

¹ Identical language appears earlier in §5, describing the situation in which a Justice of the Supreme Judicial Court dies in office, and in 4 M.R.S.A. §§105 and 157-A governing similar situations for Superior Court Justices and District Court Judges. These provisions should obviously be interpreted consistent with the conclusions found in this opinion.

The issue is what the Legislature meant when it employed the word "dependent." Since neither the language of the statute nor the legislative history provides a definition of "dependent," we must look to other sources for guidance.

The Maine case law has usually defined "dependent" in terms of legal obligation to support. Two early cases, O'Leary v. Menard, 118 Me. 25 (1919) and Supreme Lodge, N.E.O.P. v. Sylvester, 116 Me. 1 (1917), address the issue of the meaning of "dependent" for purposes of survivorship benefits to be paid by a labor union and a fraternal society. In both cases, the Court follows the rule that the decedent must have had some duty to support the purported dependent in order for him or her to be entitled to survivor benefits. See generally 4 Couch on Insurance, §27.47 (2d ed. 1960).

We do not think that the Legislature intended to use such a strict definition of dependent when it enacted the language in question. Section 5 was amended in 1975 to include the word "dependent" as part of a more general law whose purpose was to bring certain Maine statutes into conformity with the 14th Amendment to the United States Constitution, Title VII of the United States Civil Rights Act and the Maine Human Rights Act. P.L. 1975, c. 701; Statement of Fact, L.D. 2219 (107th Legislature, 1st Special Session 1976). The apparent intent of the Legislature in amending section 5 was to make survivor benefits available to all widowed spouses, regardless of sex and to eliminate the automatic cut off of survivor benefits to widows upon remarriage.

To adopt a definition of dependence for this section which would hinge wholly on whether the spouse had become the beneficiary of a legal duty of support would, in our view, merely substitute one presumption of dependence (duty of support) for another (remarriage). Furthermore, where a spouse remarried, this interpretation would result in section 5 having the same effect after the amendment as it did before, since, under Maine statutes, the husband owes a duty of support to the wife but the wife owes no matching duty to the husband, unless he is "in need". Compare 19 M.R.S.A. §442 with 19 M.R.S.A. §443.

When it amended section 5, the Legislature intended to create a fact-based test to answer the question of when survivor benefits are no longer necessary for a widowed spouse of a retired justice. We think the Legislature intended that the actual circumstances of a widowed spouse be considered in determining whether these benefits should cease. A widely employed definition, see, e.g., Internal Revenue Code, §152(a), which implements this approach, is that the purported dependent receive more than one-half of his or her support from another

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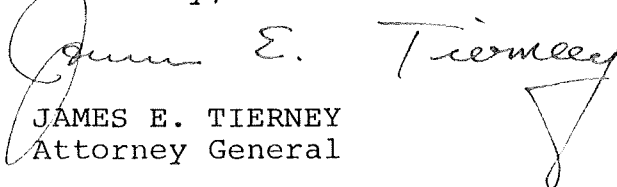
during a given period. This rule is easily applicable, renders dependence wholly a question of fact, and does not presume dependence from a particular status. Finally, it has support in Chapter 701 itself, since §24-A of that chapter adopts the same rule in determining dependence under similar language in the Workers Compensation Law. See 39 M.R.S.A. §2(10), as amended by P.L.1975, c. 701, §24-A. For these reasons, we think this definition is the appropriate one to apply under Section 5.

Two problems are raised in the application of this formulation. First, the question arises whether the receipt by the widowed spouse of the survivor benefit is to be considered as part of the spouse's own income in determining whether more than half of that spouse's support is being supplied by another. We think that it should be so considered. When a widowed spouse enters into a relationship in which part of his or her support is being supplied by another, it cannot be assumed that he or she will become a dependent under the statute and therefore forfeit the survivor benefit. Such an automatic assumption is contrary to the very intent of the Legislature in enacting the amendment in question. Moreover, since the purpose of the survivor benefit is plainly to provide support for the widowed spouse, it seems reasonable that such a source should not be ignored in determining whether dependence exists.

A second question is whether ante- or post-nuptial agreements or other contracts which might affect the amounts of support provided a widowed spouse would be given effect under this section. Since dependence under our interpretation is wholly a question of fact, such agreements would be relevant to a determination of dependence to the extent that they have an effect on actual contributions to the support of a widowed spouse.

We hope this information addresses your concern. If you have any further questions, please feel free to contact this office.

Sincerely,


JAMES E. TIERNEY
Attorney General

JET:jwp

cc: John Duffy, State Court Administrator