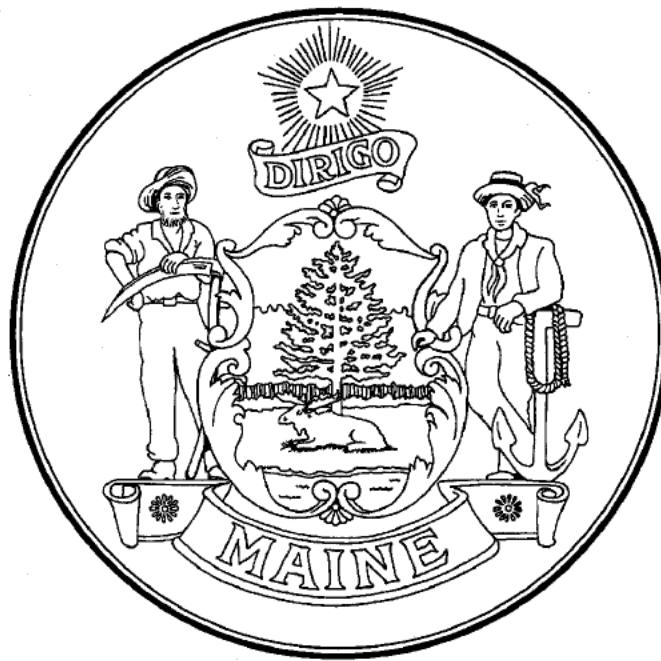


MAINE STATE LEGISLATURE

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81-66

JAMES E. TIERNEY
ATTORNEY GENERAL



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

July 17, 1981

W. G. Blodgett
Executive Director
Maine State Retirement System
State House Station #46
Augusta, Maine 04333

Dear Bill:

You have requested an opinion from this office on the effect of P. & S.L. 1981, c. 73 on participating local districts (hereinafter, pld's) in the Maine State Retirement System. Chapter 73 provides a one-time 2% cost-of-living adjustment to retired state employees and teachers and their beneficiaries. It makes no mention of participating local districts. Your question is whether the provisions of Chapter 73 are applicable mandatorily or optionally to pld's which have accepted a cost-of-living adjustment provision. We conclude that the provisions of this chapter are available to the pld's by option.

The Retirement System statutes ratified a general policy of the Legislature that substantial flexibility is to be allowed to pld's in accepting amendments to these statutes which increase benefits for state employees and teachers. 5 M.R.S.A. § 1092(12) provides that

Any amendments to this chapter enacted by the Legislature, the benefits of which could apply to employees of participating local districts, shall be made effective only in the event any such district elects to adopt such benefits and agrees to pay into the system the required costs as developed by the actuary.

While the reference in this section to "employees" may preclude its application to the present question, the section is a clear indication of the legislative policy of affording choice to pld's where possible.

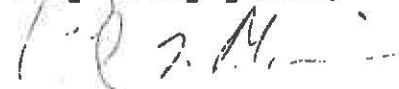
This policy was specifically implemented when a scheme for cost-of-living adjustments to retirement benefits was originally adopted by the Legislature for retired state employees and teachers, P.L. 1966, c. 337. In that Act, the Legislature expressly provided that pld's had the option of adopting the state cost-of-living adjustment scheme. Id. §§ 2, 4. This optional approach to cost-of-living benefits is still a part of the Retirement System statute. 5 M.R.S.A. § 1062(7)(D); § 1128. We think that this consistency in the treatment of pld's should be given significant weight in resolving the specific question at issue.

Finally, there is support for our conclusion in the specific language and purpose of chapter 73. Clearly, for pld's which have accepted the provisions of § 1128, an ordinary adjustment of retirement benefits under the procedure established by that section would be binding. The adjustment effectuated by chapter 73, on the other hand, is an extraordinary measure whose purpose is to compensate retirees for increasing inflation. See Emergency Preamble to chapter 73. Demonstrating the fact that this was intended as an extraordinary measure and not a normal § 1128 adjustment is the language in chapter 73 stating that the increase in benefits established therein was made "[n]otwithstanding the Revised Statutes, Title 5, section 1128" P. & S.L. 1981, c. 73, § 1 [emphasis added]. This language lends support to our conclusion that the Legislature did not intend that the 2% increase be binding upon local districts which had adopted the provisions of § 1128.

Although chapter 73 is not binding on pld's with cost-of-living adjustment schemes, we think that those districts should have the opportunity to adopt it as an option, like any other change in the benefit structure of the System. See 5 M.R.S.A. § 1092(12). For the reasons cited above, we do not think that the 2% increase in retirement benefits for retired state employees and teachers is mandatory for districts participating in a cost-of-living adjustment scheme. We do, however, think that these districts may opt to adopt it.

We hope this information is useful.

Very truly yours,



PAUL F. MACRI
Assistant Attorney General

PFM:mfe

cc: John Selser