

# MAINE STATE LEGISLATURE

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JAMES E. TIERNEY  
ATTORNEY GENERAL



STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
STATE HOUSE STATION 6  
AUGUSTA, MAINE 04333

April 20, 1983

Robert Bourgault, Chairman  
Board of Trustees  
Maine State Retirement System  
State House Station #46  
Augusta, Maine 04333

Dear Mr. Bourgault:

On behalf of the Board of Trustees of the Maine State Retirement System, you have requested an opinion of this Department as to whether a proposed amendment to 5 M.R.S.A. § 1151(7), contained in Subpart 7 of Part E of Legislative Document 1354 of the 11th Legislature, is constitutional. The amendment relates to the "Group Life Insurance Fund" which is established by Section 1151(7), and provides

If on June 30th of any fiscal year the balance of the Group Life Insurance Fund exceeds the sum of \$8,000,000, the State Controller shall transfer the excess to the General Fund.

You have asked whether the transfer of such funds in this manner would violate Article IX, Section 18 of the Maine Constitution. For the reasons which follow, it is the opinion of this Department that the funds contained in the Group Life Insurance Fund are not protected by this clause of the Constitution and that their transfer in the manner proposed would therefore not violate it. It is, however, this Department's opinion that to the extent that such funds represent dividends on premiums or portions thereof, the costs

of which have been paid to the System by persons purchasing insurance through the group life insurance program, such funds are the property of the persons involved and cannot be transferred to the General Fund without violating the so-called "taking" clauses of the United States and Maine Constitutions. However, to the extent that the funds reflect dividends on premiums or portions thereof which have been paid by the General Fund into the Group Life Insurance Fund in the first place on behalf of state employees of the System, they may be returned to the General Fund.

The relevant facts, as we understand them, are as follows. In 1955, the Legislature authorized the Maine State Retirement System to make available to state employees, teachers and members of the judiciary a group life insurance program. P.L. 1955, c. 451, enacting what is now, in amended form, 5 M.R.S.A. § 1151. Under this program, any eligible person, whether or not he or she is a member of the Retirement System, who wishes voluntarily to purchase life insurance, may do so by paying to the System his or her fair share of a premium of a group life insurance policy negotiated annually by the System with an insurance carrier. Following the purchase of the group policy by the System, the insurance carrier then determines, on an annual basis, whether it will declare a dividend on the policy. If it decides to do so, the dividend is then repaid to the System.

In order to assist the System in implementing this program, the Legislature, also in 1955, created the Group Life Insurance Fund, for the purpose of establishing an account with the State Controller into which the Board of Trustees could place contributions made by eligible persons for group life insurance, and out of which it would pay the premiums for group life insurance policies which it purchased. It has also been the practice of the Board to deposit in this account any dividends declared by its insurance carrier. As a result, a considerable surplus has in recent years built up in the Fund. As of January 31, 1983, this surplus, including interest, was well in excess of \$14 million. It is the excess of this fund over \$8 million which Legislative Document 1354 proposes to transfer to the General Fund.

It is important emphasize that the current surplus in the Group Life Insurance Fund is not attributable solely to contributions from individual persons eligible to participate in the program. The State has made contributions to the Fund on behalf of certain state employees in two ways. First, since

the inception of the program, the State has paid approximately 50 percent of the premiums of the group life insurance policy for retired state employees and retired teachers. Second, since June of 1981, as a result of a collective bargaining agreement, the State has paid all premiums for group life insurance coverage for certain classes of active state employees. Thus, a certain portion of any dividends declared by the insurance company does not relate to premium payments by individual members of the System, but relates to premiums paid by the state government itself. This office has not been advised as to the precise extent to which the current surplus reflects dividends attributable to state-paid premiums.

I. Article IX, Section 18 of the Maine Constitution.

The question which you have posed is whether the transfer of any excess in the Group Life Insurance Fund above \$8 million to the General Fund would violate Article IX, Section 18 of the Maine Constitution. That section provides as follows:

"All of the assets, and proceeds of income therefrom, of the Maine State Retirement System or any successor system and all contributions and payments made to the system for retirement and related benefits shall be held, invested or disbursed as in trust for the exclusive purpose of providing for such benefits and shall not be encumbered for, or diverted to, other purposes."

The narrow question which you raise is whether the monies contained in the Group Life Insurance Fund constitute "contributions and payments made to the system for retirement and related benefits." Article IX, Section 18 became effective on November 21, 1962 following approval by the voters of the State in a state-wide referendum. The referendum was a result of the passage of a resolve of the 100th Legislature in 1961, proposing this amendment. Resolves 1951, c. 95. The legislative history of the resolve, and of the referendum in general, is silent as to whether Section 18 was intended to apply to the already existing Group Life Insurance Fund.

In the opinion of this Department, the amendment should not be interpreted to so apply. The principal reason for this conclusion is that although members of the Retirement System may purchase group life insurance through the System, the class of persons eligible to purchase such insurance is not limited to such members. Since the inception of the group life

insurance program in 1955, any person who is simply eligible for membership in the Maine State Retirement System, as well as members of the judiciary, may purchase group life insurance through the System, regardless of whether he or she is contributing towards his or her retirement through it. 5 M.R.S.A. § 1151(1). Consequently, it is difficult to conclude that the insurance program is a "benefit" which is "related" to "retirement" within the meaning of those terms in Article IX, Section 18 of the Maine Constitution, since there are many people participating in it who are not members of the Retirement System at all. The program is simply an independent benefit which the State has chosen to make available to a certain class of public employees, regardless of whether those employees are actual members of the Retirement System.

## II. The "Taking" Clauses of the United States and Maine Constitutions.

The conclusion that the proposal in Legislative Document 1354 to transfer funds from the Group Life Insurance Fund to the General Fund does not violate Article IX, Section 18 of the Maine Constitution does not mean, however, that the proposal is without severe constitutional difficulties. The Fifth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment to that Constitution, Chicago B. & Q. R. Co. v. Chicago, 166 U.S. 226 (1897), provides that:

" . . . private property [shall not] be taken for public use, without just compensation."

Similarly, Article I, § 21 of the Maine Constitution provides:

"Private property shall not be taken for public uses without just compensation. . . ."

In the case at hand, it seems quite clear that, to the extent that the monies in the Group Life Insurance Fund constitute payments by persons seeking to purchase life insurance through the Fund, or dividends declared by insurance carriers on those individual contributors, those funds would be the "property," within the meaning of both constitutional provisions, of the persons who paid them into the Fund in the first place. That being the case, the Legislature could not "take" such funds and simply deposit them in the State's General Fund without violating both constitutions. Such an action would be the clearest form of appropriation of private property for public use without compensation.

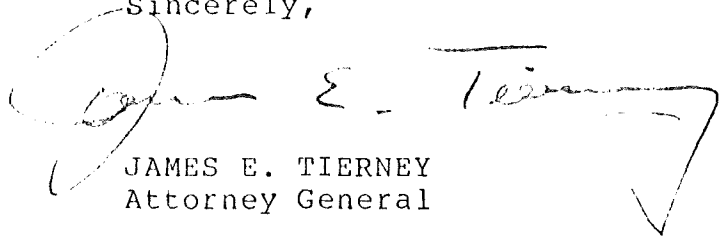
This is not to say, however, that all of the monies contained in the Group Life Insurance Fund are so protected. As indicated above, since the inception of the group life insurance program, the State itself has been making contributions to the Fund for the purpose of providing group life insurance for certain classes of state employees. To the extent that the balance in the Group Life Insurance Fund reflects these contributions, or dividends on policies purchased with these contributions, it can be repossessed by the State Legislature for the benefit of the General Fund without violating the "taking" clauses.

\* \* \* \*

In summary, therefore, it is the opinion of this Department that the proposed transfer to the General Fund of funds in the Group Life Insurance Fund contained in Subpart 7 of Part E of Legislative Document 1354 would not violate Article IX, Section 18 of the Maine Constitution. To the extent that such funds represent dividends, or interest thereon, of premiums paid by persons eligible to participate in the group life insurance program, such a transfer would constitute a "taking" of private property without compensation in violation of the United States and Maine Constitutions. To the extent that such funds represent dividends, or interest thereon, of contributions for group life insurance purposes made to the Fund by the State, they may be transferred to the General Fund.

I hope the foregoing answers your question. Please feel free to reinquire if further clarification is necessary.

Sincerely,



JAMES E. TIERNEY  
Attorney General

JET/ec

cc: Senator Mary Najarian  
Representative Donald V. Carter  
Chairpersons, Joint Standing Committee  
on Appropriations and Financial Affairs