

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

June 15, 1983

Honorable Carl W. Smith
House of Representatives
State House Station #2
Augusta, Maine 04333

Dear Representative Smith:

You have requested an opinion on the question of whether the practice of the State Budget Office of making payments representing employer contributions to the Maine State Retirement System other than on a quarterly basis conflicts with the provisions of 5 M.R.S.A. §§ 1667 or 1062(5). This office concludes that these statutes are not violated by the practice of the State Budget Office.

5 M.R.S.A. § 1062(5) (Supp. 1982) states, in relevant part, as follows:

The board of trustees [of the Retirement System] shall submit budget estimates to the State Budget Officer in accordance with section 1665. For state employees, on each and every payroll from which retirement contributions are deducted the State Controller shall cause a charge to be made to each department, agency or governmental unit of an amount or amounts in payment of the employer costs of all charges related to the retirement system and which shall be credited to the appropriate funds as listed in subsection 1. For state employees, percentage rates to be predetermined by the actuary and approved by the board of trustees shall be applied to the total gross salaries of members appearing on those payrolls and the resultant charges shall be periodically credited to the corresponding retirement fund. For public school teachers,

percentage rates to be predetermined by the actuary and approved by the board of trustees shall be applied to the total gross salaries of members covering the most recent school year preceding the preparation of the biennial budget. The resultant amount shall be appropriated and credited to the corresponding retirement fund.

This provision controls the transfer of funds from the State of Maine to the Maine State Retirement System for the purpose of the employer's contribution. It distinguishes between payments made on behalf of state employees, which are deducted on the basis of the state payroll and "periodically credited to the corresponding retirement fund," and payments made on behalf of teachers which are to be "appropriated and credited to the corresponding retirement fund." As this office understands it, the State's contributions for its state employees are transferred to the Retirement System on a basis current with the payroll. Since this practice appears to be what the statute requires, there is no issue as to impropriety with regard to these funds.

Thus, the narrow question posed concerns the intervals at which the State may properly transfer funds appropriated for the employer contribution for public school teachers. This office is advised by the Budget Office that employer contributions for these employees are currently made on a monthly basis. Your inquiry is whether or not these payments must be made on a quarterly basis, so as to permit a greater return on investments made by the Retirement System thereby reducing the amounts of future appropriation requests by the System to the Legislature.

Section 1062(5) does not answer this question by its terms. Its legislative history, however, is instructive. Prior to 1973, subsection 5 contained a requirement that the moneys appropriated to the Maine State Retirement System as the employer's contribution be allocated to the System on a quarterly basis. This quarterly allocation requirement was deleted in 1973. P.L. 1973, c. 369, §§ 1-3. While there is no debate or any other relevant legislative history with regard to this change, it certainly suggests that quarterly payments by the State on behalf of teachers are no longer required.

There is, however, one other statute which is relevant to the allocation process. 5 M.R.S.A. § 1667 (Supp. 1982) provides, in pertinent part, as follows:

Not later than June 1st of each year, the Governor shall require the head of each department and agency of the State Government to submit to the Bureau of the Budget a work program for the ensuing fiscal year. Such work program shall include all appropriations, revenues, transfers and other funds, made available to said department or agency for its operation and maintenance and for the acquisition of property, and it shall show the requested allotments of said sums by quarters for the entire fiscal year, classified to show allotments requested for specific amounts for personal services, capital expenditures and amounts for all other departmental expenses. . . . The Governor, with the assistance of the State Budget Officer shall review the requested allotments with respect to the work program of each department or agency and shall, if he deems it necessary, revise, alter or change such allotments before approving the same. The Governor may authorize the State Budget Officer to approve quarterly allotments not to exceed \$500 in any account. The aggregate of such allotments shall not exceed the total sums made available to said department or agency for the fiscal year in question. The State Budget Officer shall transmit a copy of the allotments as proposed by the Governor to the head of the department or agency concerned and also a copy to the State Controller. The State Controller shall thereupon authorize all expenditures to be made from the sums available on the basis of such allotments and not otherwise. . . . (Emphasis added).

The section goes on to provide for revisions of the work program by the heads of state departments on a quarterly basis.

This section establishes a general procedure for the allotment of funds to state agencies, with the allotments being made on a quarterly basis. It does not appear, however, that § 1667 was intended to apply to the Maine State Retirement System with regard to the payment of allotments. The Maine State Retirement System is treated differently from most state departments for purposes of the allocation of appropriated funds. As noted above, contributions made to the Retirement System by the State as an employer are subject to specific legislation, 5 M.R.S.A. § 1062(5). As a result, the Bureau of the Budget handles payments to the System differently from most other state agencies. Ordinarily, the Bureau

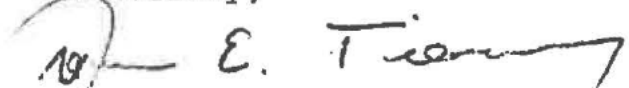
disburses money directly to third parties for the expenses incurred by an agency and does not disburse the money to the agency itself. In the case of the Retirement System, however, the reverse is true. In terms of section 1667, therefore, it is the opinion of this office that the provision requiring that "the State Controller shall thereupon authorize all expenditures to be made from the sums available on the basis of such allotments and not otherwise" is directed to the state agencies as to whom the Bureau of the Budget and the Treasury act as agents, and not to those agencies which can independently receive money. Thus, that part of § 1667 does not apply to the Maine State Retirement System.

Finally, it should be noted that the Maine State Retirement System statute contemplates that the Legislature will fund the Retirement System on a current and actuarially sound basis. See 5 M.R.S.A. §§ 1062(3)(B) - (D) (1979); 5 M.R.S.A. § 1063, as enacted by P.L. 1983, c. 291; Op. Me. Atty. Gen. 79-173. Since the funding of the Maine State Retirement System is based on actuarial valuation which includes a factor for interest on investments, to the extent that the monthly allocation of funds by the State to the Maine State Retirement System may result in a net loss to the System in a given year, the actuarial valuation system would reflect that loss and more funds from the Legislature to make up the loss would be sought in the following year. Thus, a monthly allocation of funds to the Retirement System for employer contributions for public school teachers will not, in and of itself, result in the underfunding of the System, since the Legislature may remedy any shortfall by continuing to appropriate money to the System on the basis of current actuarial valuations thereof.

In summary, it is the conclusion of this Office that neither 5 M.R.S.A. § 1062(5) nor § 1667 requires the State Budget Office to allocate funds representing the employer contributions for public school teachers to the System on a quarterly basis. Further, in any event, any loss to the System resulting from the practice of the Budget Office of making allocations to the System for public school teachers on a monthly basis could be made up at the next legislative session.

If you have any further questions or comments, please feel free to contact this Office.

Sincerely,



JAMES E. TIERNEY
Attorney General

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