

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

January 10, 1984

Peter Bradford, Chairman
Public Utilities Commission
State House Station #18
Augusta, Maine 04333

Dear Mr. Bradford:

Commissioner Cheryl Harrington of your agency has inquired of this Office on behalf of the entire membership of the Public Utilities Commission as to whether the members of the Commission are eligible for the same retirement compensation provided to Justices of the Superior Court, or, if not, whether they are entitled to the so-called "five percent option" accorded to all confidential employees of the State by P.L. 1981, ch. 453, wherein certain employees are given the choice of having the State pay their contributions to the Maine State Retirement System or receive a five percent salary increase. For the reasons which follow, it is the Opinion of this Office that members of the Public Utilities Commission are not eligible for the same retirement compensation provided for Justices of the Superior Court, but are entitled to the "five percent option."

Prior to 1981, the members of the Public Utilities Commission were in the same position with regard to the Maine State Retirement System as any other State officials appointed for fixed terms: 5 M.R.S.A. § 1091(1) provides that membership in the Retirement System "shall be optional in the case of any class of elected officials or any class of officials appointed for fixed terms." Since the members of the Commission serve

for fixed terms, they could, at their option, prior to 1981, join the Retirement System, provided that they made appropriate contributions to the System from their salaries.

In 1981, however, the Legislature enacted a statute entitled in part, "AN ACT . . . to Fund and Implement Benefits for State Employees Excluded from Collective Bargaining." P.L. 1981, ch. 453. Section 12 of that Act provided:

2. Effective the pay week closest to July 1, 1981, the State shall pay the mandatory retirement contribution presently paid by confidential employees. . . .

Confidential employees not required by law to participate in the Maine State Retirement System may elect to receive a 5% salary increase in lieu of state payment of the retirement contribution. . . .

The term "confidential employees" was defined by Section 12 of Chapter 453 to include persons who were excluded from collective bargaining units pursuant to statute and whose salaries "are not subject to adjustment or approval by the Governor." Since the members of the Public Utilities Commission were excluded from collective bargaining units by statute, and since their salaries were established as a function of the classified service salary structure and were not subject to approval or adjustment by the Governor, they satisfied the requirements of the definition of "confidential employees," and were eligible for the "five percent option" immediately upon the effectiveness of Chapter 453 on June 11, 1981. See Op.Me.Att'y Gen. 81-72, copy attached.

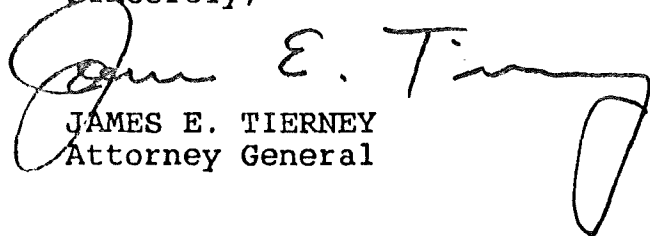
In 1983, however, the Legislature altered the manner in which the compensation of the members of the Public Utilities Commission was fixed. It enacted a provision whereby members' salaries would be established as a function of those of the Justices of the Superior Court. P.L. 1983, ch. 477, Part E, Subpart 4, amending 2 M.R.S.A. § 6-A. The question presented, therefore, is whether, in making this alteration, the Legislature intended to accord to the members of the Public Utilities Commission the retirement benefits of Justices of the Superior Court, or, if not, it meant to revoke their entitlement to the "five percent option."

It is the Opinion of this Department that the enactment by the Legislature in 1983 of an amendment to the statute

governing the salaries of the Public Utilities Commission has no effect whatever on the provisions of law governing their retirement options. It is first of all quite clear that the 1983 legislation did not accord the members of the Commission the same retirement benefits as Justices of the Superior Court, since the legislation in question makes no reference to the section of the Revised Statutes relating to the retirement benefits of the Justices, 4 M.R.S.A. § 103. Nor is there any indication that, merely by altering the place of reference for determining the salaries of the Public Utilities Commissioners, the Legislature intended to divest them of the "five percent option" benefit which it had accorded to them two years earlier. Rather, the new law clearly was designed to legislatively recognize that the Commissioners function in a quasi-judicial manner and that their salaries, like those of judges, should not be subject to legislative debate while issues of legislative importance were pending before them. Accordingly, in the absence of an expression of legislative intent that the Commissioners should be denied the "five percent option," this Department is unable to reach any other conclusion than that they should remain eligible for that benefit.

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

Sincerely,



JAMES E. TIERNEY
Attorney General

JET/ec

Enc.

cc: Rodney L. Scribner, Commissioner
Department of Finance and Administration

G. William Buker, State Budget Officer

Roberta Weil, Executive Director
Maine State Retirement System