

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

March 23, 1984

Honorable Charles G. Dow
Senate Chairman

Honorable Daniel B. Hickey
House Chairman

Joint Standing Committee on Aging, Retirement and Veterans
State House
Augusta, Maine 04333

Dear Senator Dow and Representative Hickey:

You have asked, on behalf of the Joint Standing Committee on Aging, Retirement and Veterans, whether an amendment to 5 M.R.S.A. § 1128(1)(A) enacted by P.L. 1983, ch. 529 was binding on those participating local districts in the Maine State Retirement System which, prior to the enactment of the amendment, had applied for acceptance of 5 M.R.S.A. § 1128 and had certified that acceptance to the System. The amendment provided that the annual cost-of-living increase in retirement allowances for the System's retirees for the year commencing in September, 1983 would be 4 percent, regardless of the percentage change in the Consumer Price Index for the preceding fiscal year. Your Committee has requested this Department's Opinion of the amendment's applicability in light of the language of 5 M.R.S.A. § 1092(12), which reads in pertinent part as follows:

Any amendments to this chapter . . . 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 actuaries.

For the reasons which follow, it is the Opinion of this Department that, notwithstanding this provision, the 1983 amendment to Section 1128 must be viewed as binding on those participating local districts which had earlier agreed to be bound by the operation of that section.

The general statutory structure currently controlling cost-of-living increases for retirees in the Maine State Retirement System was enacted in 1977. At that time, the Legislature provided that the Board of Trustees of the System shall, each September, adjust the retirement allowance of each retired state employee, teacher or beneficiary thereof in the System by an amount equal to the percentage change in the Consumer Price Index for the preceding fiscal year, up to a maximum of 4 percent. P.L. 1977, ch. 573, § 3, amending 5 M.R.S.A. § 1128(1). This provision did not extend to retirees from "participating local districts" in the System, that is, counties, cities or towns which have elected to participate in the System pursuant to 5 M.R.S.A. § 1092. For those entities the Legislature provided that the Board of Trustees may make a similar adjustment only if such a district applies to the Board and agrees in writing to pay all necessary costs. P.L. 1977, ch. 573, § 3, enacting 5 M.R.S.A. § 1128(2). Pursuant to this latter provision, many participating local districts subsequently applied to the Board of Trustees for "acceptance" of Section 1128 and budgeted annually the necessary funds to cover an annual increase in allowances for their retirees of 4 percent.

The system just set forth functioned without difficulty until the fiscal year ending June 30, 1983. In that year, for the first time since the enactment of the amendments to Section 1128 in 1977, the Consumer Price Index fell below 4 percent, finishing at 2.6 percent for the year ending June 30, 1983. Anticipating this situation, the 111th Legislature, at its First Regular Session in 1983, enacted P.L. 1983, ch. 529, which amended Section 1128 to provide that "[n]otwithstanding any other provision of this section the percentage increases in September 1983 shall be 4%." The legislative history of this provision is silent as to whether it was intended to apply to participating local districts who had applied to the Board of Trustees pursuant to subsection 2 of Section 1128 for automatic adjustment of their retiree's allowances. Nonetheless, the Board of Trustees of the System, acting on the advice of this Office, determined that the legislatively mandated 4 percent increase should be extended to these retirees.

On review, this Department must agree that this action was correct. The participating local districts in question had both agreed in advance to provide cost-of-living increases to their retirees of up to 4 percent annually, and had budgeted funds for that purpose. The only difference in the situation in 1983 from preceding years was that the fixing of the amount of the increase in that year occurred as a result of special legislative action rather than by operation of the Consumer Price Index. Nonetheless, the result was the same as it had been for each year since 1977: a 4 percent annual increase. In view of these circumstances, and in view of the total silence of the Legislature as to its intentions on the point, the action of the Board was in accordance with law.

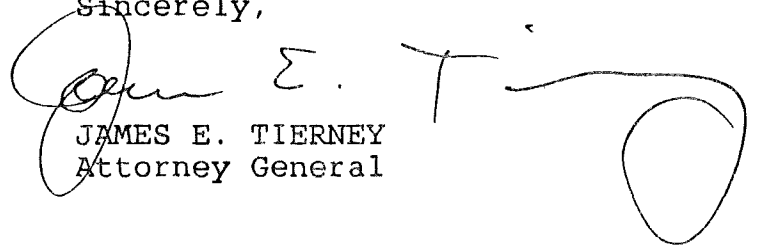
This conclusion is supported by a comparison of Chapter 529 with other actions of the Legislature since 1977 with regard to cost-of-living increases for retirees. In 1981, the Legislature enacted an additional 2 percent increase for retirees, but accompanied that with an appropriation from the General Fund to cover the costs for state employees and teachers. P.L. 1981, ch. 73. In 1982, it authorized retirees a 50 cent increase for each year of creditable service to retirees with a similar appropriation. P.L. 1981, ch. 702. Neither of these increases were mandatory upon participating local districts, whether they had "accepted" Section 1128 or not. In fact, there was a specific provision of the 50 cent increase legislation which explicitly authorized, but did not require, such districts to participate in the increase upon the provision of a written agreement to pay the costs. P.L. 1981, ch. 702, pt. U, § 5. Thus, where additional appropriations are required to fund retirement increases, such increases have expressly not been made binding on participating local districts. But where no such appropriations are required, as in the case of Chapter 529, it is fair to conclude that the Legislature assumed that such an increase be binding on those districts who had earlier agreed to budget the necessary funds to cover such a contingency.

Finally, this conclusion is consistent with the terms of 5 M.R.S.A. § 1092(12), quoted above. That section merely provides that an amendment to the retirement laws according benefits which could apply to retirees of a participating local district shall only be applicable to those retirees if the district elects to pay the required costs. In the case at hand, the districts affected had already agreed in writing to pay the costs of an annual 4 percent cost-of-living increase. Thus, the application of Chapter 529 to them does not conflict with 5 M.R.S.A. § 1092(12).

In conclusion, I would suggest that, in order that this type of a problem not occur in the future, in enacting legislation relating to retirement benefits where there is no appropriation from the General Fund for state employees and teachers, the Legislature specifically provide whether or not approval by local participating districts is to be required for the increase to apply to such a district.

I hope the foregoing answers your questions. Please feel free to contact me if further clarification is necessary.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Tierney", with a large, stylized flourish extending to the right.

JAMES E. TIERNEY
Attorney General

JET/ec

cc: Roberta Weil
Executive Director, Maine
State Retirement System