

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

August 22, 1984

Roberta Weil
Executive Director
Maine State Retirement System
State House Station 46
Augusta, Maine 04333

Dear Mrs. Weil:

On behalf of the Board of Trustees of the Maine State Retirement System, you have requested an opinion of this Department as to whether it is appropriate to pay benefits out of the reserves of the Maine State Retirement System to retirees under the new Maine Judicial Retirement System. For the reasons set forth below, it is the opinion of this Department that the statute creating the new Maine Judicial Retirement System does not attempt to utilize the assets of the Maine State Retirement System to pay its benefits, but that, in any event, such benefits could not constitutionally be paid out of the reserves of the Maine State Retirement System.

The Maine Judicial Retirement System was established by P.L. 1984, c. 853, § 15, enacting, inter alia, Chapter 27 of Title 4 of the Maine Revised Statutes Annotated. A quick review of the new law makes it abundantly clear that, although the Legislature intended that the two retirement systems, the Maine State Retirement System, 5 M.R.S.A. ch. 101, and the Maine Judicial Retirement System, 4 M.R.S.A. ch. 27, be administered by the same people, they are to be entirely separate systems.

The Board of Trustees of the Maine Judicial Retirement System consists of the same individuals who are on the Board of Trustees of the Maine State Retirement System. 4 M.R.S.A. § 1231. Thus, the Boards, although consisting of the same individuals, are separate Boards, and they are each charged with administering the separate systems. Similarly, the Executive Director, the Actuary and the Medical Board of the Maine Judicial Retirement System are the same individuals who act in those capacities for the Maine State Retirement System, 4 M.R.S.A. § 1232, 1233, 1234; however, the positions thus held are separate positions for each system.

The new statute contemplates the comingling of the funds of the two systems for purposes of investment only, 4 M.R.S.A. § 1254, but this does not establish one fund for purposes of benefits. Although the funds created by 4 M.R.S.A. c. 27 are to be administered in the same manner as that provided for the administration of the funds in the Maine State Retirement System, 5 M.R.S.A. c. 101, subch. III, the funds of each system are separate for purposes of benefits and are administered separately by the respective Boards of Trustees of each system. 4 M.R.S.A. § 1251 and 5 M.R.S.A. § 1061.

Each system is a separate entity with the powers and privilege of a corporation. 4 M.R.S.A. § 1202 and 5 M.R.S.A. § 1002. The purposes of each of the systems is different.

The purpose of the Maine Judicial Retirement System is to provide retirement allowances and other benefits. . . for judges."
4 M.R.S.A. § 1202.

and the Maine State Retirement System has

". . . the purpose of providing retirement allowances and other benefits. . . for employees of this State." 5 M.R.S.A. § 1002.

The term "employee" excludes Justices and Judges. 5 M.R.S.A. § 1001(10).

Finally, there is a clear expression of legislative intent in chapter 27 that the Maine Judicial Retirement System's financial obligations are to be met by the State and the State alone

"It is the intent of the Legislature that there shall be appropriated and transferred annually to the Maine Judicial Retirement System the funds necessary to meet the

system's long-term and short-term financial obligations based on the actuarial assumptions established by the board of trustees upon the advice of the actuary. . . . "

4 M.R.S.A. § 1255(2).

Thus, there was absolutely no contemplation by the Legislature that funds of the Maine State Retirement System be used to pay benefits out of its reserves to judges who are beneficiaries of the Maine Judicial Retirement System.

Beyond this, even if the Legislature had intended such a use of reserves of the Maine State Retirement System, there is an express prohibition in the Maine Constitution against the diversion of funds of the Maine State Retirement System.

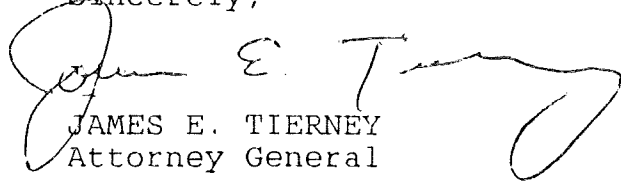
"All of the assets, and proceeds of income therefrom, of the Maine State Retirement System or any successor system and all contributions and payments made to the system for retirement and related benefits shall be held, invested or disbursed as in Trust for the exclusive purpose of providing for such benefits and shall not be encumbered for, or diverted to, other purposes." Me. Const. art I, § 18.

Thus, the assets and proceeds of income from the Maine State Retirement System must be used exclusively for the payment of benefits to members of the System, and may not be diverted to pay benefits of members of some other system.

Moreover, as this Department indicated in an opinion to the Board of Trustees of the Maine State Retirement System on April 20, 1983, Op. Me. Att'y Gen. 83-18, to the extent that monies in the Maine State Retirement System reserves were contributions of members of the Maine State Retirement System, those monies would be the "property" within the meaning of the "taking" clauses of the United States and Maine Constitutions, of the members who paid the contributions into the Maine State Retirement System in the first place or their beneficiaries. That being the case, there can be no transfer of such funds to the Maine Judicial Retirement System without violating both constitutions. This would clearly be an appropriation of private property for public use without just compensation.

I trust the foregoing Opinion is of assistance to the Board of Trustees of the Maine State Retirement System.

Sincerely,



JAMES E. TIERNEY
Attorney General

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