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

May 14, 1985

Honorable Robert Clifford
Chief Justice, Maine Superior Court
Kennebec County Courthouse
95 State Street
Augusta, Maine 04330

Dear Chief Justice Clifford:

In your capacity as Chief Justice of the Maine Superior Court, you have requested this Office to provide its Opinion on certain aspects of the Maine Judicial Retirement Law (4 M.R.S.A. §§ 1201-1406, effective December 1, 1984). In particular, you have asked for this Department's interpretation of the language of 4 M.R.S.A. § 1355-A dealing with the availability of minimum ordinary death benefits to the eligible spouse or children of those judges who were in service prior to December 1, 1984. Your specific questions may be stated as follows:

1. Are minimum ordinary death benefits available under 4 M.R.S.A. § 1355-A to the eligible spouse or children of a judge who was in service prior to December 1, 1984 and who has since retired?
2. Are minimum ordinary death benefits available under 4 M.R.S.A. § 1355-A to the eligible spouse or children of a judge who was in service prior to December 1, 1984 and who subsequently dies while in service as a judge,

notwithstanding the fact that, at the time of his death the judge does not meet the eligibility requirements for retirement?

3. In the event that in the circumstances described in questions 1 and 2 above, the death benefits available under the Maine Judicial Retirement Law are less than what was provided under prior law, has there been a diminution of judicial compensation in violation of Article VI, Section 2 of the Maine Constitution.

For the reasons explained below, it is the Opinion of this Department that minimum ordinary death benefits under 4 M.R.S.A. § 1355-A are only available to the spouse or children of those judges who were in service prior to December 1, 1984 and who die while in active service as a judge (but not as an Active Retired Judge). As to those judges, such benefits are available to their eligible spouses or children notwithstanding the fact that at the time of death the eligibility requirements for retirement have not been met. Accordingly, Question 1 is answered in the negative and Question 2 is answered in the affirmative. Finally, as to the constitutional issue raised in Question 3, it is the Opinion of this Department that, viewed as a whole, the statute enacting the Judicial Retirement Law has not resulted in an unconstitutional diminution of judicial compensation.

I. Application of Section 1355-A to Judges Retiring after December 1, 1984.

It is this Department's understanding that your first question pertains to the situation of former Superior Court Justice Sumner Goffin who was in service as a judge prior to December 1, 1984 but who retired on December 23, 1984. Your question, simply put, is whether 4 M.R.S.A. § 1355-A applies to such a retired judge. Based upon the plain language of that statute, this Department concludes that it does not.

4 M.R.S.A. § 1355-A provides, in pertinent part, as follows:

Notwithstanding the provisions of section 1355, any eligible spouse and child or children of a judge who was in service prior to December 1, 1984, shall, upon the death of that judge, be entitled to a minimum benefit of 1/2 the retirement benefits of the judge, determined in accordance with section 1352, on the

assumption that retirement of the judge had taken place on the date of his death. (emphasis added).

The term "judge" as used in § 1355-A clearly does not include a retired judge. That term is specifically defined in 4 M.R.S.A. § 1201(12) to mean:

...a Justice of the Supreme Judicial Court or the Superior Court, any Judge of the District Court, any Administrative Court Judge or any Associate Administrative Court Judge who is actively serving as of December 1, 1984 or who is appointed subsequent to December 1, 1984, but does not include Active Retired Judges. (emphasis added).

The statutory definition of "judge" refers to one who "is actively serving". While it is true that Justice Goffin actively served on the Superior Court "as of December 1, 1984" until his retirement on December 23, it seems clear that the reference to December 1, 1984 in § 1201(12) was meant to describe those judges who not only were in active service as of that date, but remained so at the time of their deaths. In other words, a retired judge does not continue to be a "judge" as defined in 4 M.R.S.A. § 1201(12) simply because he actively served on or after December 1, 1984. This conclusion is supported by the fact that Active Retired Judges are specifically excluded from the definition of "judge". It is difficult to imagine that the Legislature intended a retired judge, but not an active retired one, to be included within the definitional scope of 4 M.R.S.A. § 1201(12). In short, therefore, Justice Goffin is no longer a judge within the meaning of 4 M.R.S.A. § 1355-A and that statute does not apply to him.

Nevertheless, even assuming that Justice Goffin is a "judge" within the meaning of § 1201(12), this Department would still conclude that 4 M.R.S.A. § 1355-A does not apply to a retired judge. Section 1355-A provides that the death benefits involved are to be determined in accordance with Section 1352, "on the assumption that retirement of the judge had taken place on the date of his death." This quoted language makes absolutely no sense if applied to a judge who has already retired. It is apparent that the Legislature intended to provide minimum mandatory death benefits to those members of the Judiciary who have served prior to December 1, 1984 (the effective date of the Maine Judicial Retirement System) and who, subsequent thereto, die while in active service as a

judge. Since the intended beneficiaries of § 1355-A are the spouses or children of certain judges who die in office, it is necessary to make a legislative assumption that the date of death is the date of retirement for purposes of computing the death benefits. To conclude that 4 M.R.S.A. § 1355-A applies to a retired judge would be inconsistent with the legislative purpose that the statute was designed to serve and, consequently, this Department concludes that § 1355-A only applies to those judges who served prior to December 1, 1984 and who, subsequent to that date, die while still in active service as a judge.^{1/}

II. Constitutionality of Applying Section 1355-A to Judges Retiring After December 1, 1984.

Having concluded that the provisions of 4 M.R.S.A. § 1355-A only apply to those judges who served prior to December 1, 1984 and who die subsequent thereto while in service as a judge, the question arises whether, as to Justice Goffin and others similarly situated, there has been a diminution of compensation in violation of Article VI, § 2 of the Maine Constitution,^{2/} in view of the fact that under the law in effect prior to December 1, 1984, the spouse of a judge who died while receiving retirement benefits would be entitled to receive an annual payment equal to 3/8 of the current annual salary of a judge of the court from which the deceased judge had retired. See 4 M.R.S.A. § 5 (Supreme Judicial Court); 4 M.R.S.A. § 103 (Superior Court); 4 M.R.S.A. § 157-A (District Court). As noted earlier, (see note 1 supra), pursuant to the

^{1/} This conclusion is consistent with the other provisions of the Maine Judicial Retirement Law dealing with the availability of death benefits. With the exception of a member receiving a disability retirement allowance, death benefits are only payable if a judge dies "in service". See 4 M.R.S.A. §§ 1355(1), (2) and 1356. In addition, under the Maine Judicial Retirement Law, a retiree may provide benefits to a designated beneficiary upon his death, by accepting lower retirement benefits under the various payment options set forth in 4 M.R.S.A. § 1357(2).

^{2/} Art. VI, § 2, Me. Const., provides in its entirety:

The Justices of the Supreme Judicial Court and the Judges of other courts shall, at stated times receive a compensation, which shall not be diminished during their continuance in office; but they shall receive no other fee or reward for their services as Justices or Judges.

Maine Judicial Retirement Law the surviving spouse of a judge receiving retirement benefits is no longer automatically entitled to a benefit upon the retired judge's death. Rather, the retiree may make provision for a beneficiary designated by him by choosing one of the payment options described in 4 M.R.S.A. § 1357(2). The net effect of the change in the judicial retirement law is a temporary reduction in the benefits which would have been available to a surviving spouse had the judge retired under the prior law.^{3/}

As applied to Justice Goffin, however, there has been no diminution of compensation in violation of Article VI, § 2 of the Maine Constitution since as of December 23, 1984 (the date of his retirement) he did not meet the eligibility requirements for retirement under the prior law. On the contrary, only by virtue of the newly enacted Maine Judicial Retirement Law was Justice Goffin able to retire and receive retirement benefits, including protection for his surviving spouse, approximately ten months earlier than he would have been able to do under the prior law. Thus, rather than causing a diminution of compensation, the new law enabled Justice Goffin to retire and receive benefits which were otherwise unavailable to him under the previously existing law.

^{3/} For purposes of illustration only, it is this Department's understanding that under the prior law, Justice Goffin could have retired on October 10, 1985, at age 65, with 12 years of service as a judge. (4 M.R.S.A. § 103). At that time, had he retired, he would have been entitled to 3/4 of the annual salary of a Superior Court Judge ($43,736 \times .75 = \$32,802$) and upon his death, his surviving spouse would have received 1/2 of his benefits (or 3/8 of the annual salary of a Superior Court Justice), i.e., $32,802 \times .5 = \$16,401$. Under the new Maine Judicial Retirement System, Justice Goffin was able to retire at age 60 with 10 years of service. Because he is entitled to receive the minimum benefit under 4 M.R.S.A. § 1352(4), Justice Goffin is entitled to receive 3/4 of the salary of a Superior Court Justice as of June 30, 1984 ($43,736 \times .75 = \$32,802$). In order to provide 1/2 of the benefits to his surviving spouse, however, he must take an actuarially reduced benefit under the optional payment method of 4 M.R.S.A. § 1357(2) (Option 3) ($32,802 \times .847 = \$27,783.32$), which reduced benefit also results in a reduction of the death benefit to his wife. ($\$27,783.32 \times .5 = \$13,891.64$). Justice Goffin's retirement benefit (and any death benefit to his wife), of course, will increase over time in accordance with 4 M.R.S.A. § 1352(4)(A) & (B) and eventually will equal and exceed what the prior law would have provided.

This line of analysis would also seem to apply to any judge in service prior to December 1, 1984 who, as of that date, did meet the eligibility requirements for retirement under the prior law, but who subsequently retires under the new law. As to those judges, it is this Department's Opinion that no unconstitutional diminution of compensation has occurred because each of these judges could have retired prior to December 1, 1984 under the provisions of 4 M.R.S.A. §§ 1401-1406, and thereby enjoyed the benefits of the prior law. By electing not to, these judges have apparently chosen to enjoy the increased annual salaries which were an integral part of the comprehensive revision of the judicial compensation package enacted by the 111th Legislature. P.L. 1983, ch. 853, pt. C. Those salaries were increased, effective December 1, 1984, by approximately \$7,000 and will continue to increase by approximately that amount annually until 1988. In view of these significant salary increases, this Department cannot conclude that Maine's judges have suffered a diminution of compensation within the meaning of Article VI, § 2, notwithstanding the fact that, as to a particular type of benefit, the new law may provide lower benefits, at least on a temporary basis, than what was available under prior law. In short, when considered as a complete compensation package, the new law, effective December 1, 1984, is clearly more generous to Maine's Judiciary and cannot be characterized as a diminution in overall compensation.

III. Application of Section 1355-A to Judges Dying After December 1, 1984.

Your second question also calls for an interpretation of 4 M.R.S.A. § 1355-A and asks whether minimum ordinary death benefits under that statute are available to the surviving spouse of a judge who was in service prior to December 1, 1984 and who thereafter dies "in office" but prior to meeting the eligibility requirements for retirement under the Maine Judicial Retirement System. This Department's Opinion is that § 1355-A clearly provides benefits under such circumstances. Once again, the language of 4 M.R.S.A. § 1355-A is clear and provides that:

...any eligible spouse and child or children of a judge who was in service prior to December 1, 1984, shall, upon the death of that

judge, be entitled to a minimum benefit of 1/2 the retirement benefit of the judge determined in accordance with section 1352, on the assumption that retirement of the judge had taken place on the date of his death. (emphasis supplied).

The term "retirement" is specifically defined in 4 M.R.S.A. § 1201(18) to mean "the termination of membership service with a retirement allowance granted under this chapter." By assuming that "retirement" occurs on the date of death, the Legislature in § 1355-A has provided that certain judges will be deemed to have retired, i.e., to be entitled to a retirement allowance, notwithstanding the fact that the eligibility requirements for retirement may not have been met at the time of death. That is the very purpose of the assumption that retirement takes place at the date of death. To conclude otherwise would render the legislative assumption mere surplusage since, if a judge already meets the eligibility requirements for retirement, there would be no need to "assume" anything. The assumption of a retirement date only becomes necessary if § 1355-A was designed to cover those judges who did not meet the eligibility criteria at the time of death. It is this Department's Opinion that that is precisely what the Legislature intended when it enacted 4 M.R.S.A. § 1355-A.

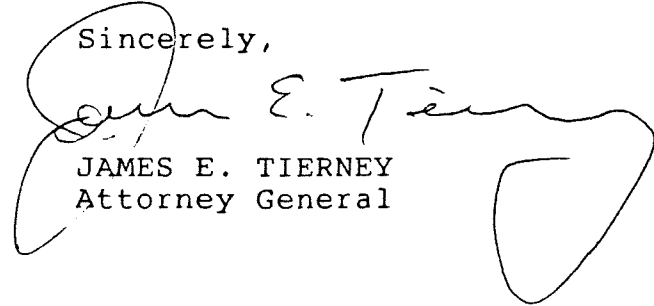
Notwithstanding this conclusion, however, it is apparent that in certain cases the death benefits available under § 1355-A to the surviving spouse or children of a judge who was in service prior to December 1, 1984 may be less than what had been available under the prior law.^{4/} Nevertheless, for the reasons already explained, it is this Department's Opinion that no unconstitutional diminution of compensation has taken place since, when viewed in its entirety, the new judicial

^{4/} For example, and by way of illustration only, the spouse of a Justice of the Superior Court who had been appointed to the bench in December 1978 would receive an annual death benefit, under 4 M.R.S.A. § 1355-A, of approximately \$9,851.53 assuming a date of death of January 1, 1985. This figure, which is 1/2 of the deceased judge's retirement benefit, is calculated by use of the formula in 4 M.R.S.A. § 1352(1), and is subject to cost of living adjustments. This benefit will obviously change as a different date of death is assumed since the member's average final compensation will increase as will the number of years of service. On the other hand, had the judge died prior to December 1, 1984, his surviving spouse would have been entitled to an annual payment of \$16,401 (\$43,376 x .375).

compensation plan represents a significant increase over what was available under prior law. (See Part II, infra).

I hope this information is helpful to you and please feel free to call upon this Office if we can be of further assistance.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "James E. Tierney". The signature is written over the typed name and title.

JAMES E. TIERNEY
Attorney General

JET/dab

cc: Roberta Weil
Executive Director
Maine Judicial Retirement System

Sen. Michael E. Carpenter
Sen. Jean B. Chalmers

Sen. N. Paul Gauvreau
Rep. Daniel B. Hickey
Chairmen, Joint Standing Committee
on Aging, Retirement and Veterans