

MAINE STATE LEGISLATURE

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

November 26, 1985

The Honorable John L. Martin, Speaker
Maine House of Representatives
State House
Augusta, Maine 04333

Dear Speaker Martin:

You have requested the opinion of this Office on two questions relating to the eligibility of members of the Legislature for participation in the group accident and sickness or health insurance program established by 5 M.R.S.A. § 285. Specifically, you ask first whether a legislator, or any state employee, must be a member of one of the legislatively-established retirement systems at the time he leaves the state's service in order to be eligible for participation in the program. Second, you inquire whether the provisions of P.L. 1985, ch. 391, extending the eligibility for participation in the program to certain members of the Legislature who are retired teachers, may constitutionally be applied to retired teachers who are currently members of the Legislature and who both will be 60 years of age and will leave the Legislature on December 2, 1986. For the reasons which follow, it is the opinion of this Office that a state employee, including a legislator, must be a member of a retirement system at the time he leaves state service in order to be eligible for participation in the program, and that it would not violate the provisions of Article IV, Part 3, Section 7 of the Maine Constitution for such eligibility to be extended to retired teachers who are currently members of the Legislature who seek to participate in the program on December 3, 1986.

Title 5 M.R.S.A. § 285^{1/} provides in pertinent part:

Group accident and sickness or health insurance shall be available to state employees, subject to the following provisions:

1. Eligibility; generally. The following persons are eligible for group accident and sickness or health insurance:

A. Each appointed or elective officer or employee of the State who is eligible for membership in the Maine State Retirement System, Maine Legislative Retirement System or the State Police Retirement System;

* * *

G. Subject to subsection 1-A, employees in any of the categories denominated in paragraphs A to F who:

* * *

(2) After April 26, 1968, retire and who on the date of their retirement are currently enrolled in this group accident and sickness or health insurance plan; or

(3) After December 2, 1986, and after reaching normal retirement age, cease to be members of the Legislature and are recipients of retirement allowances from the Maine State Retirement System based upon creditable service as teachers, as defined by section 1001, subsection 25. This paragraph shall also apply to former members who were members on December 2, 1986.

1-A. Eligibility; retirees. Any person otherwise eligible pursuant to subsection 1, paragraph G, must in addition, in order to be eligible under this section:

* * *

^{1/} The provisions quoted are those that will be in effect on December 3, 1986, when the questions which you ask will actually arise.

B. If not retiring on a disability benefit, have participated in the group accident and sickness or health insurance plan for at least one year immediately prior to retirement; or

C. If eligibility is based upon subsection 1, paragraph G, subparagraph (3), have participated in the group accident and sickness or health plan for at least one year immediately prior to ceasing to be a member of the Legislature.

1-B. Ineligibility. Eligibility unless this section shall not be extended to include members of . . . the Maine Teachers Association. . . (emphasis added)

It is apparent from the foregoing that the Legislature intended that only those state employees, including legislators, who are members of one of the legislatively-created retirement systems at the time they leave state service, and who accept a pension from that system, be eligible for participation in the group accident and sickness or health insurance program when they leave state service. This conclusion is made clear by the use of the word "retire" in subsection 1(G)(2) of Section 285, as distinguished from the words "after reaching normal retirement age" in the succeeding subsection dealing with teachers who are members of the Legislature but who are also receiving retirement allowances. It is therefore not enough for a state employee, or a legislator, simply to reach the age of 60 and to terminate his state employment in order to be eligible for participation in the program. He must also "retire," which means to accept a pension from one of the retirement systems.^{2/}

With regard to your second question, Subsection 1(G)(3) and Subsection 1-A(C) of Section 285 were enacted in 1985 for the purpose of extending eligibility to participate in the group accident and sickness or health insurance program to those members of the Legislature who were retired teachers and therefore otherwise not eligible to participate because of the provisions of Subsection 1-B. P.L. 1985, ch. 391. The

^{2/} While not strictly applicable to Section 285, the definitional section of the statute establishing the State Retirement System defines "retirement" to mean "termination of membership [in the System] with a retirement allowance granted [by the retirement statutes]." 5 M.R.S.A. § 1001(20).

legislators affected by this latter subsection desired to be free of its disqualification because as members of the Maine Teachers Association Retirement Plan, they are obliged to pay regular premiums for participation in a group health insurance plan, whereas if they were able to participate in such a plan in the capacity of retired legislators, such premiums would be paid by the State Retirement System. 5 M.R.S.A. § 285(8). Thus, the new provisions stipulated that after December 2, 1986, the last date in the life of the 112th Legislature, any person leaving the Legislature who has reached "normal retirement age" (currently 60 years) may participate in the program, with the premiums to be paid by the Maine State Retirement System as for all other retired state employees.

You have asked, however, whether such a provision, as it applies to the members of the 112th Legislature might violate Article IV, Part 3, Section 7 of the Maine Constitution. That article provides, in pertinent part:

The Senators and Representatives shall receive such compensation, as shall be established by law; but no law increasing their compensation shall take effect during the existence of the Legislature, which enacted it.

There would seem to be little doubt that the provision of free health insurance for life to retiring members of the Legislature constitutes a form of "compensation" within the meaning of the constitutional provision. See Opinion of the Justices, 159 Me. 77 (1963) ("compensation" means personal expenses rather than legislative expenses.) The question thus becomes whether the new provisions of Section 285 escape the application of the constitutional provision because they do not become effective until after the life of the 112th Legislature.

It is the opinion of this Office that, for that reason, these provisions do not violate the Constitution. The purpose of the constitutional prohibition appears to have been to prevent members of a particular Legislature from voting themselves and actually receiving financial benefits without the opportunity for the electorate to hold them accountable for doing so. This policy was reflected in the remarks of Delegate John Holmes of Alfred at the Maine Constitutional Convention of 1819-20, when, during the course of a debate over whether the compensation of the Legislature should be fixed in the Constitution or left to ordinary legislation, he stated:

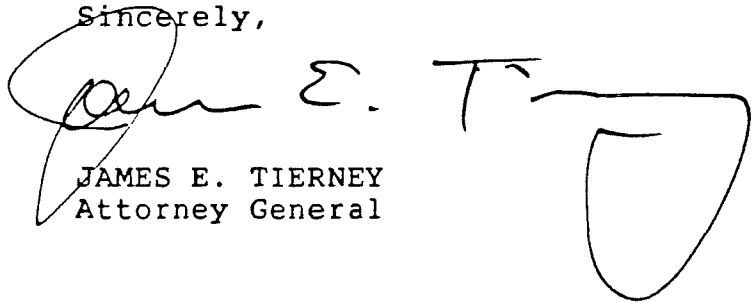
Forty years' experience, in Massachusetts, has proved that there is no risk in trusting the Legislature to establish their own

compensation. Can we with safety fix the compensation of any of the officers in the Constitution? What is an adequate sum to-day, may be too much or too little tomorrow. This is the business of legislation, and it may be more safely trusted to the representatives, who expecting to be re-elected, will take care not to offend their constituents. Experience has lately proved, that such offenses are not easily pardoned. Debates and Journal of the Constitutional Conventions of the State of Maine (1819-1820) 209 (1894).

Thus, so long as a statute according additional compensation to the members of a particular Legislature does not take effect until after the end of the life of that Legislature, it cannot violate Article IV, Part 3, Section 7.

I hope the foregoing answers your questions. Please feel free to reinquire in further clarification is necessary.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Tierney". The signature is stylized and includes a large, sweeping flourish at the end that loops back under the name.

JAMES E. TIERNEY
Attorney General

JET/dab

cc: Sally Diamond, Executive Director
Legislative Council

Jo Gill, Executive Director
Maine State Employees Health Insurance Program