

# MAINE STATE LEGISLATURE

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JAMES E. TIERNEY  
ATTORNEY GENERAL



86-7

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

March 14, 1986

The Honorable Mary Najarian  
The Honorable Daniel B. Hickey  
Chairpersons, Joint Standing Committee  
On Aging, Retirement & Veterans  
State House Station #2  
Augusta, ME 04333

Dear Senator Najarian and Representative Hickey:

You have asked whether 5 M.R.S.A. § 1121(1)(A), which provides that any member of the Maine State Retirement System may retire and receive a pension at age 60 if he has been in active service for one year immediately prior to his retirement, is unconstitutional with regard to those persons who joined the system prior to the enactment of the current version of this statute in 1981. In addition, you have inquired whether the answer to this question applies equally to all members of the Retirement System, whether State employees, teachers or employees of participating local districts. For the reasons which follow, it is the opinion of this Department that 5 M.R.S.A. § 1121(1)(A) is not unconstitutional with regard to any member of the Retirement System.

5 M.R.S.A. § 1121(1)(A) provides, in pertinent part, as follows:

Any member, who at the attainment of age 60 years is in service, may retire at any time then or thereafter on a service retirement allowance, provided that the member has been in service for a minimum of one year immediately prior to the retirement or has at least 10 years of creditable service . . .

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Prior to 1981, section 1121(1)(A) simply provided that a member of the Retirement System may retire at age 60 so long as he was "in service."<sup>1/</sup> The question therefore arises whether the imposition by the Legislature in 1981 of a requirement that a member be in service for one year prior to age 60 (if he did not have ten years of creditable service) is constitutional with regard to those members of the system in 1981, in view of the fact that the expectations of such persons to pensions may, at least to some extent, be covered by the Contract Clauses of the United States and Maine Constitutions. U.S.Const., art. I, § 10, cl. 1; Me.Const., art. I, § 11. Op.Me. Att'y Gen., 85-25 at 3-4.

In answering this question, the first inquiry to be made is to determine the reasonable expectations of persons who were members of the system at the time of the amendment to § 1121(1)(A) in 1981. At that time, as indicated above, a person with less than 10 years of creditable service had the expectation of receiving a pension at the age of 60 so long as he was "in service" upon reaching that age. Read literally, the law at that time would appear to contemplate that a person who joined the system and worked for fewer than 10 years at some time in the past could rejoin the system<sup>2/</sup> and work for the day immediately preceding his 60th birthday and obtain a pension. Indeed, it appears that a significant number of members of the system, particularly at the local level, had obtained pensions on this basis.

This Office, however, is unable to find that such an expectation on behalf of such a member was reasonable. Although no legislative history of the original version of § 1121(1)(A) exists, it is difficult to conclude that the Legislature intended that the "in service" requirement of that section could be satisfied by a mere one day's employment prior to retirement. Rather, the Legislature more likely believed that, when it enacted the section, it was providing the opportunity to receive a pension to persons who were truly full-time employees of the government at the time that they reached age 60. Thus, in order to determine whether a member was "in service" at the time he reached age 60, one would have to read into the statute a requirement that he be employed by the government for a "reasonable" amount of time prior to that date. In the view of this Department, such a requirement would

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<sup>1/</sup> The one-year requirement was added by P.L. 1981, ch. 146. The entire subsection was repealed and replaced by P.L. 1983, ch. 480, § 5.

<sup>2/</sup> So long as he did not withdraw his contributions in the meantime and thereby cease to be a member. 5 M.R.S.A. § 1091(6).

define the reasonable expectations of persons who worked for the government for fewer than 10 years but who wished to return to government service prior to their 60th birthdays for the purpose of receiving a pension.

Having thus defined the reasonable expectations of persons with less than 10 years of creditable service in 1981 to a pension upon the attainment of age 60, the question thus becomes whether the Legislature unconstitutionally upset those expectations by changing the requirement that a person be employed for a reasonable period of time prior to age 60 to one that he be employed for one year prior to that date. In the view of this Department, such a modification in the terms under which a pension would be granted did not upset the reasonable expectations of persons with less than 10 years of creditable service in 1981. As indicated above, such persons could only reasonably have expected that they would be entitled to pensions upon reaching age 60 if they were truly full-time employees of the government at that time. It would therefore be unreasonable for such a person to have believed that he would be entitled to a pension simply by working one day for the government prior to his 60th birthday. That being the case, it does not appear to this Department that substituting a one-year requirement for a requirement of a reasonable period of employment would unfairly upset the reasonable expectations of such persons in 1981. Thus, even if the Contract Clauses of the United States and Maine Constitutions apply to this situation<sup>3/</sup> they are not violated.

Your second question is whether the answer to the first question is any different depending upon whether the member in question is a State employee, a teacher, or an employee of a participating local district. In the view of this Department, the answer is the same with regard to all of these classes of employees. Section 1121(1)(A) applies by its terms to "any member" of the system. The term "member" is defined to include any "employee" who is a member of the system. 5 M.R.S.A. § 1001(12). The term "employee" is then defined to include all eligible State employees as well as teachers in the public schools. 5 M.R.S.A. § 1001(10). Finally, all benefits to which State employees are entitled are extended by 5 M.R.S.A. § 1091(8) to all persons who become members of the system by virtue of their employment in participating local districts.

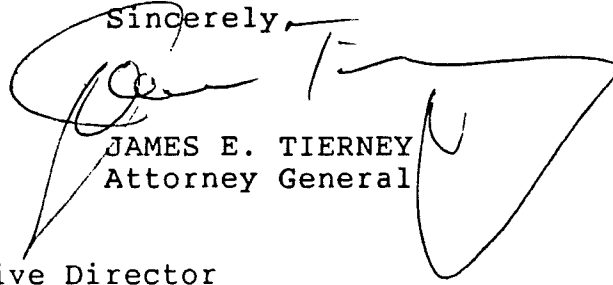
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<sup>3/</sup> In view of the conclusion reached herein as a matter of statutory construction, it is not necessary to resolve this question in the context of this opinion. See generally Op.Me.Att'y Gen., 85-25; Betts v. Board of Administration of Public Employees' Retirement System, 582 P.2d 614, 617 (Cal. 1978).

Thus, whatever interpretation is given to § 1121(1)(A) applies to each of the three categories of members in the Retirement System.

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

Sincerely,

A large, stylized handwritten signature in black ink, likely belonging to James E. Tierney, is written over the typed name and extends to the right.

JAMES E. TIERNEY  
Attorney General

JET:sw

cc: Roberta M. Weil, Executive Director  
Maine State Retirement System