

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

June 20, 1989

Charles A. Morrison
Commissioner of Administration
State House Station #74
Augusta, Maine 04333

Dear Commissioner Morrison:

You have inquired whether the Governor, the Attorney General, the Secretary of State, the State Treasurer, the State Auditor and the District Attorneys are entitled as a matter of law to the fifty percent state contribution toward dependent coverage in the Maine State Employees Health Insurance Plan currently available to classified employees and certain members of the unclassified service. For the reasons which follow, it is the opinion of this Department that these officials are not entitled to the contribution.

Eligibility for participation in the Maine State Employees Health Insurance Plan is governed by 5 M.R.S.A. § 285(1)(A), which provides that: "Each appointed or elected officer or employee of the State who is eligible for membership in the Maine State Retirement System . . ." is eligible for group accident and sickness or health insurance. Elected officials and officials appointed for a fixed term are made eligible for membership in the Maine State Retirement System by 5 M.R.S.A. § 17652 (formerly 5 M.R.S.A. § 1091(1)). The Governor (as an official elected by direct popular vote) and the Attorney General, Secretary of State, State Treasurer, and State Auditor (as officials elected by the Legislature) clearly fall within this section since they are "elected officials." The District Attorneys are eligible for membership in the Maine State Retirement System pursuant to the same section and as a result of being defined as "full-time officers of the State," 30-A M.R.S.A. § 256 (formerly 30 M.R.S.A. § 454). Thus, all of the officials in question are eligible for participation in the Maine State Retirement System and therefore in the State Employees Health Insurance Program. The question thus becomes

whether these officials are entitled to the State-paid fifty percent contribution if they elect to have their dependents covered under the State Employees Health Insurance Plan. .

The answer to this question requires an examination of the history of State contribution to dependent health coverage. In 1980, the Legislature first provided for such a contribution for the classified service when it passed legislation implementing collective bargaining agreements which provided for State payment of \$8 per month per employee toward the cost of dependent health insurance coverage. P. & S.L. 1979, ch. 109, 110. At the same time, the \$8 contribution was extended to certain "confidential employees." P.L. 1980, ch. 739, § 8. Confidential employees were defined, for purposes of the Act, as "those within the Executive Branch who are excluded from bargaining units pursuant to the Maine Revised Statutes, Title 36, section 979-A, subsection 6, paragraph B, C, D and H." P.L. 1980, ch. 739, § 3. At the time, section 979-A(6) of Title 26 consisted of the following definition of the term "state employee:"

6. State employee. "State employee" means any employee of the State of Maine performing services within the executive department except any person:

A. Elected by popular vote; or

B. Appointed to office pursuant to statute, ordinance or resolution for a specified term by the Governor or by a department head or body having appointive power within the executive department; or

C. Whose duties necessarily imply a confidential relationship with respect to matters subject to collective bargaining as between such person and the Governor, a department head, body having appointive power within the executive department or any other official or employee excepted by this section; or

D. Who is a department or division head appointed to office pursuant to statute, ordinance or resolution for an unspecified term by the Governor or by a body having appointive power within the executive department; or

E. Who has been employed less than 6 months; or

F. Who is a temporary, seasonal or on-call employee; or

G. Who is serving as a member of the State Militia or National Guard; or

H. Who is a staff attorney, assistant attorney general or deputy attorney general in the Department of the Attorney General.

In 1981, the Legislature expanded the state contribution to dependent health insurance coverage for confidential employees to 50 percent of the premium for such coverage. P.L. 1981, ch. 453, § 12(5). It also added two new categories of confidential employees eligible for this benefit by incorporating by reference two additions to the section 979-A(6) list which had been earlier added by the same session of the Legislature. Id., § 12, changing the reference to section 979-A(6) to paragraphs B, C, D, I and J,^{1/} the last two of which were added by P.L. 1981, ch. 381, § 3. Paragraphs I and J read:

I. Who is appointed to a major policy-influencing position as designated by Title 5, chapter 71; or

J. Who substantially participates in the formulation and effectuation of policy in a department or agency or has a major role, other than a typically supervisory role, in the administration of a collective bargaining agreement in a department or agency.

In order to have qualified for the 50 percent contribution toward dependent health insurance coverage, therefore, the officials in question had to have fallen within one of paragraphs B, C, D, I or J of Section 979-A(6) of Title 26. It does not appear, however, that they fall within any of the

^{1/}In eliminating the reference to section H, the Legislature was apparently influenced by the fact that deputy and assistant attorneys general are designated as "major policy-influencing positions" by 5 M.R.S.A. § 932, and therefore fell within new section I.

enumerated paragraphs. Paragraph B is inapplicable because none of the officers are appointed to their respective offices by the Governor or other official in the Executive Branch. Paragraph C does not apply because none of the officials has any official relationship with the Governor or any other executive official. Paragraph D applies only to officials within the Executive Branch. None of the officials are included in the list of "major policy-influencing positions" referred to in paragraph I. Finally, none may be included in paragraph J, which is intended to apply to other lower ranking members of the Executive Branch not referred to in earlier paragraphs.

It thus appears clear that the Legislature did not intend to include the Governor, the Attorney General, the Secretary of State, the State Treasurer, the State Auditor and the District Attorneys in the group of unclassified officers eligible to receive contributions for dependent coverage under the Maine State Employees Health Insurance Plan. This conclusion is supported by the fact that the Legislature chose to exclude from the list of eligible persons those referred to in paragraph A of Section 979-A(6) of the State Employees Labor Relations Act. That paragraph refers to persons "elected by popular vote". The section thus clearly applies to the Governor and the District Attorneys. The other four officers which are the subject of your inquiry, however, are all elected by the Legislature and not by "popular" vote. Nonetheless, since these four officers do not appear to fit within any of the other categories in the list set forth in subsection 6, the Legislature must be regarded as having intended to exclude them from eligibility for the contribution, particularly since they more closely fit within the category of "elected by popular vote" than any other available alternative, and, as indicated above, are treated for other purposes as "elected officials." Consequently, it is the opinion of this Department that under current law none of the officials in question are eligible for the 50 percent State contribution toward dependent coverage under the Maine State Employees Health Insurance Plan.^{2/}

^{2/}You also inquired whether these officials are eligible to participate in the program relating to dental care for themselves, as opposed to their dependents. Since the dental coverage offered by the Maine State Employees Health Insurance Plan is simply an extension of the health insurance coverage offered by that Plan, it is clear that these officials may participate in it, since, as indicated above, they are eligible to participate in the health insurance plan themselves in the first place.

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

Sincerely,



CABANNE HOWARD
Deputy Attorney General
Chief, Opinions Division

CH/ec

cc: Governor John R. McKernan
G. William Diamond, Secretary of State
James E. Tierney, Attorney General
Samuel Shapiro, State Treasurer
Rodney L. Scribner, State Auditor
District Attorneys
Jo Gill, Exec. Dir., Employees Health Insurance Program