

MAINE STATE LEGISLATURE

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November 19, 1991

Honorable Dan A. Gwadosky
House Majority Leader
Maine House of Representatives
State House Station #2
Augusta, ME 04333

Dear Representative Gwadosky:

You have inquired whether the recent amendment to Article IX, Section 18 of the Maine Constitution relating to appropriations by the Legislature for the Maine State Retirement System applies to funds deappropriated to the System for Fiscal Year 1992 as part of the general appropriations statute for that period. For the reasons which follow, it is the Opinion of this Department that the constitutional amendment does not apply to that particular legislative action, and that the transfers from the General Fund to the Maine State Retirement System for the remainder of Fiscal Year 1992 may continue to reflect that action.

The constitutional amendment which was approved by the electorate on November 5, 1991, and will enter into force shortly, provides:

Funds appropriated by the Legislature for the Maine State Retirement System are assets of the system and may not be diverted or deappropriated by any subsequent action.

Your question concerns the effect of this new constitutional provision on an action of the Legislature in its

General Appropriation Act for Fiscal Year 1992, P.L. 1991, ch. 591, effective July 17, 1991. In that Act, the Legislature amended Section 17151(2) of the laws relating to the Maine State Retirement System, 5 M.R.S.A. § 17001 et seq. to provide

. . . that for fiscal years 1991-92 the annual appropriation must be \$73,500,000 less than the amount that would otherwise be applied toward the unfunded liability of the system. It is the intent of the Legislature that the amount of reduction, together with the balance of the unfunded liability in the retirement system on July 1, 1993, must be placed on a 27-year amortization schedule. P.L. 1991, ch. 591, § P-1.

This objective was accomplished in the Appropriations Act through two separate deappropriations. First, the Act deappropriated \$54,539,996 from \$145,448,217 appropriated in Part A of the Act for the retirement of teachers. Second, it made an undifferentiated deappropriation of \$18,956,520 from the Personal Services appropriations for all executive departments and agencies in Part A, an amount intended to relate to the employer's share of contributions to be made to the Maine State Retirement System for the retirement of State General Fund employees. P.L. 1991, ch. 591, § P-22.

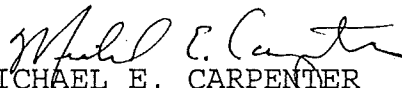
The effect of these deappropriations was to reduce proportionately the amount of money transferred on a monthly basis from the General Fund to the Maine State Retirement System as the employer's share of contributions to the System for the retirement of teachers and State employees. These reduced contributions, absent further legislative action, will continue for the remainder of Fiscal Year 1992. The question which you raise is whether the entry into force of the constitutional amendment requires that transfers made to the Retirement System subsequent to the amendment's effective date be for the full amounts reflected in Part A of the Appropriations Act, unreduced as a result of the deappropriations mandated by Part P.

In the opinion of this Department, the restoration of such deappropriated funds is not required by the new amendment to Article IX, Section 18 of the Maine Constitution. The terms of the new amendment, quoted above, provide that once funds are appropriated by the Legislature for the Maine State Retirement System, they may not be diverted or deappropriated by subsequent action. The prohibition, therefore, is on legislative action occurring subsequent to the appropriation of funds. The deappropriation action here, contained in Part P of the Appropriations Act had already occurred by the time the

constitutional amendment entered into force. Since, like statutes, constitutional amendments must be regarded as being prospective in effect only unless there is a manifest legislative intention to the contrary, 16 Am. Jr. 2d, Constitutional Law § 65; 16 C.J.S., Constitutional Law § 36a, there is no basis for the invalidation of the continuing legal effect of Part P on the strength of the new constitutional amendment. Consequently, the deappropriations contained in that Part for the Retirement System may constitutionally continue in effect for the remainder of the fiscal year.

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

Sincerely,


MICHAEL E. CARPENTER
Attorney General

MEC:sw

cc: Governor John R. McKernan
President Charles P. Pray
Speaker John L. Martin
Claude R. Perrier
Executive Director, Maine State Retirement System