

MAINE STATE LEGISLATURE

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February 10, 1992

Claude R. Perrier, Executive Director
Maine State Retirement System
State House Station 46
Augusta, Maine 04333

Dear Mr. Perrier:

On behalf of the Board of Trustees of the Maine State Retirement System, you have requested an opinion from this Department as to whether, in light of a recent amendment to Article IX, Section 18 of the Maine Constitution prohibiting the deappropriation of appropriations made to the Maine State Retirement System, the Legislature may deappropriate funds previously appropriated to the Maine Judicial Retirement System. Specifically, during the special session in December, 1991, the Legislature enacted an appropriation bill which resulted in a deappropriation of funds previously appropriated to the Judicial Department to be expended for contributions to the Maine Judicial Retirement System. For the reasons set forth below, it is the opinion of this Department that the Maine Judicial Retirement System is a separate system from the Maine State Retirement System and therefore, the constitutional language does not prohibit the deappropriation of appropriations made to the Maine Judicial Retirement System.

The original version of Article IX, Section 18 became effective on November 21, 1962 and provided as follows:

All of the assets, and proceeds or income therefrom, of the Maine State Retirement System or any successor system and all contributions and payments made to the system to provide for retirement and related benefits shall be held, invested or disbursed as in trust for the exclusive purpose of providing for such benefits and shall not be encumbered for, or diverted to, other purposes.

Me. Const. art. IX, § 18. The provision was amended by referendum in November, 1991, which resulted in the addition of the following language:

The 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.

Clearly the recent amendment to section 18 refers only to funds of the Maine State Retirement System. Thus, in order to determine what is meant by the "Maine State Retirement System," it is necessary to examine what that term encompassed when it was included as part of section 18, when it was enacted in 1962.


In 1962, the "Maine State Retirement System" possessed "the powers and privileges of a corporation", and was governed by a board of trustees. R.S. ch. 63-A, § 2 (Supp. 1963), enacted by P.L. 1955, ch. 417, § 1. Although the statutes governing the system have been revised, the corporate structure of the system has not changed. 5 M.R.S.A. § 17101(4) (1989) and § 17102 (Supp. 1991). Members of the Supreme Judicial Court and Superior Court were not members of the Maine State Retirement System at that time but were specifically excluded from membership as a result of the statutory definition of "employee". R.S. ch. 63-A, § 1 (Supp. 1963), enacted by P.L. 1955, ch. 417, § 1. Retirement benefits for retired members of these judicial bodies historically had been provided for separately in the statute governing the judiciary. R.S. ch. 103, § 5 and ch. 106, § 3 (1954). When the District Court system was created in 1961, district court judges were also excluded from the retirement system and, for purposes of retirement benefits, were treated the same as other members of the judiciary. R.S. ch. 108-A, § 9 (Supp. 1963), enacted by P.L. 1961, ch. 386, § 9. Thus, in 1962, members of the judiciary were not included in the Maine State Retirement System.

When the state statutes were recodified in 1964, members of the judiciary continued to be excluded from membership in the Maine State Retirement System and benefits to retired judges continued to be covered separately by the statute governing the judiciary. 5 M.R.S.A. § 1001(10) (1964) and 4 M.R.S.A. §§ 5, 103 and 157 (1964). The Maine Judicial Retirement System, which covers all members of the judiciary, was not created until 1983, at which time the Legislature created a separate corporation with a separate board of trustees, although the members of the board would be the same persons as the Board of Trustees of the Maine State Retirement System. 4 M.R.S.A. §§ 1202 (1989) and 1231 (Supp. 1991), enacted by P.L. 1983, ch. 853, § C, 15.

Because members of the judiciary were not part of the Maine State Retirement System when Article IX, Section 18 became effective in 1962, and because the Maine Judicial Retirement System was subsequently created as a separate corporation, the reference to the Maine State Retirement System in the amendment to Article IX, Section 18 enacted in 1991 cannot be regarded as encompassing the Maine Judicial Retirement System. Therefore, the deappropriation by the Legislature of funds appropriated to the Maine Judicial Retirement System does not violate the constitutional provision.

This letter supersedes the advice contained in a letter from Cabanne Howard, Deputy Attorney General, to Senator Ruth S. Foster, dated November 19, 1991.

Sincerely,


MICHAEL E. CARPENTER
Attorney General

MEC:lm

cc: Senator Joseph C. Brannigan
Representative Lorraine N. Chonko
Chairs, Joint Standing Committee on
Appropriations and Financial Affairs
Senator Dale McCormack
Representative John Jalbert
Chairs, Joint Standing Committee on
Aging, Veterans and Retirement
Senator Ruth S. Foster
Dana Baggett, Court Administrator