

MAINE STATE LEGISLATURE

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Senator Dale McCormick
Representative John Jalbert
Chairs, Joint Standing Committee on
Aging, Retirement and Veterans
State House Station #3
Augusta, ME 04333

Dear Senator McCormick and Representative Jalbert:

You have asked whether the provisions of Part W of Legislative Document No. 2185, "AN ACT to Make Supplemental Appropriations and Allocations for the Expenditures of State Government for the Fiscal Years Ending June 30, 1992 and June 30, 1993 and to Change Certain Provisions of the Laws," would, if enacted, violate a recent amendment to Article IX, Section 18 of the Maine Constitution, restricting the ability of the Legislature to divert or deappropriate funds appropriated to the Maine State Retirement System. Specifically, you ask whether the provisions of Part W increasing the rate of contributions of the various classes of State employees for retirement purposes by one percent and diverting eighty percent of that amount to the General Fund would violate the new constitutional amendment, and whether the provision of the bill transferring \$3 million from funds administered by the Maine State Retirement System for retired employees health insurance to the Retirement Allowance Fund, coupled with a concomitant reduction in State payments to the Retirement Allowance Fund, would violate the new amendment. For the reasons which follow, it is the Opinion of this Department that the first proposal would not violate the new amendment, but the second proposal would.

Prior to its recent amendment, Article IX, Section 18 of the Maine Constitution 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.

In November, 1991, the Maine voters approved the addition of the following language to this section, which addition has since become effective:

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.

On July 17, 1991, the Governor approved emergency legislation making appropriations for the State government in general for the 1991-92 and 1992-93 fiscal years. P.L. 1991, ch. 591. Included in this Act were funds appropriated to the Maine State Retirement System for the current biennium. These funds are therefore covered by the new amendment, and may not be "diverted or deappropriated" by legislative action taken subsequent to its effective date.

The Maine State Retirement System operates seven separate funds, three of which are relevant to your question: the Retirement Allowance Fund, the State Retiree Health Insurance Fund, and the State Retired Teachers' Health Insurance Fund. 5 M.R.S.A. § 17152(2), (5) and (6). As this Department understands it, each biennium, the Legislature appropriates money to these funds in the following manner: For State employees, the appropriation for each department of State government contains in the category "personal services" an amount of money sufficient to cover the employer contributions to the Retirement Allowance Fund, as well as the cost of the purchase of premiums for retired State employees for group health insurance, which is paid to the State Retiree Health Insurance Fund, as required by 5 M.R.S.A. § 285(8) and (8-A). For teachers, a single appropriation is made through the budget of the Department of Education for each year of the biennium to cover both the employer share of contributions for teachers to the Retirement Allowance Fund and the cost of the purchase of premiums for retired teachers for group health insurance, which is paid to the State Retired Teachers' Health Insurance Fund. See P.L. 1991, ch. 591, § A-25 (Department of Education

Budget), appropriating \$145,448,217 and \$155,485,477 for these purposes.

Your first question concerns Sections W-1 through W-12 of the bill. These sections generally would have the effect of increasing by one percent the contribution for retirement purposes of all State employees, but transferring the amount thereby raised to a "suspense account" of the General Fund and paying only approximately twenty percent of that money to the Maine State Retirement System, retaining the rest in the General Fund. Your question is whether this device would violate the new amendment to Article IX, Section 18.

In the view of this Department, it would not. By its terms, the new amendment applies only to "funds appropriated by the Legislature." The proposal contained in Part W does not purport to affect any funds already appropriated by the Legislature. Rather, it simply raises the amount required by law which each State employee must contribute for continued participation in the retirement system, and then directs that only approximately twenty percent of that amount be actually paid to the Maine State Retirement System, and the remainder given to the General Fund. This way of raising funds from the State employees does not affect funds already appropriated by the Legislature, and therefore does not violate the new constitutional amendment.

This Department is constrained to observe, however, that consistent with advice which was rendered to your Committee last year, any effort by the Legislature to increase the employee contributions for retirement purposes would very likely be found to violate the Contract Clause of the United States Constitution, Art. I, § 10, at least with regard to those State employees whose pension rights had "vested." See Op. Me. Att'y Gen. 91-6, at 8-10, a copy of which is attached. Thus, consistent with that advice, this Department would advise the Legislature that if it is contemplating raising the State employees' share of retirement contributions, such an increase should be limited to those employees with less than 10 years of creditable service.


Your second question concerns the provisions of Section W-13 of the bill, which would transfer \$3 million from an asserted "surplus" in the State Retiree Health Insurance Fund and State Retired Teachers' Health Fund to the Retirement Allowance Fund, and direct the State Controller to "reduce the payments" to the Maine State Retirement System accordingly, all by the end of the current biennium. In the view of this Department, this provision would violate the new constitutional amendment because it would direct a reduction in payment of money to the Maine State Retirement System which has already

been authorized, in the manner outlined above, in the general appropriations act for Fiscal Years 1991-92 and 1992-93. As indicated above, the Maine State Retirement System operates seven separate funds (including the two at issue here), the assets of all of which are declared by law to be assets of the Retirement System. 5 M.R.S.A. § 17152. Thus, once appropriations to any of these funds have been made, they become assets of the system and may not "be diverted or deappropriated" by subsequent legislative action.

This is not to say, however, that the Legislature may not deal with the problem of paying premiums for the participation of retired State employees and teachers in a group health insurance program in another way in subsequent biennia. Since these premiums are paid on a current basis, there is nothing to prevent the Legislature from allowing the existing two funds to be exhausted and to specify that some other State agency, rather than the Maine State Retirement System, pay the premiums in the future.^{1/}

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

Sincerely,


MICHAEL E. CARPENTER
Attorney General

MEC:sw

cc: Governor John R. McKernan, Jr.
Senator Joseph C. Brannigan
Representative Lorraine N. Chonko
Chairs, Joint Standing Committee on
Appropriations and Financial Affairs
Representative Judith C. Foss
Sponsor, Legislative Document 2185

^{1/}The proposal contained in Section W-13, of course, does not purport to alter benefits. Should the Legislature contemplate doing so, this Department would advise that the continued participation in a group health insurance program would very likely be considered part of the retirement "package" available to current State employees, and therefore would be subject to the constitutional limitations outlined in Op. Me. Att'y Gen. 91-6 regarding alterations in the "package" for those employees whose rights to retire had "vested."