

MAINE STATE LEGISLATURE

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March 7, 1994

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

Dear Mr. Perrier:

I am writing in response to the inquiry from your Department as to the constitutionality of a transfer of funds by the Bureau of Accounts and Control of the Department of Administrative and Financial Services from the Retirement System to the General Fund. The transfer occurred on July 19, 1993 in furtherance of the direction of the Legislature in two statutes, P.L. 1991, ch. 780 and P.L. 1993, ch 6., in which the Legislature sought to assist in the resolution of the State's budget crisis by effectively transferring a \$4 million surplus from the health insurance funds administered by the Maine State Retirement System to the General Fund. However, because the Legislature did not reflect the transfer in making appropriations to the Retirement System for the 1993-94 and 1994-95 fiscal years in the General Appropriation Act of 1993, it is the opinion of this Department that the transfer of such funds during that period runs afoul of the recently enacted constitutional provision preventing the diversion or deappropriation of funds appropriated to the Retirement System once they have been appropriated by the Legislature.

In 1991, the Legislature and the voters approved an amendment to Article IX, Section 18 of the Maine Constitution, which 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.

The general effect of this provision is that once the Legislature has made an appropriation of funds constituting the employer's share of retirement contributions of State employees or teachers, which appropriation is generally accomplished through the General Appropriations Act passed by the First Regular Session of each Legislature for the succeeding two fiscal years, the Legislature may not subsequently reduce the amount of that appropriation, or authorize the Executive Branch to take action causing such a reduction. The question which your Department has posed is whether the action of the Bureau of Accounts and Control with regard to the \$4 million surplus in the health insurance funds violates this provision.

In order to determine whether the action of the Bureau violated the constitutional provision, a summary of the history of legislative action on the question must be undertaken. At its Second Regular Session in 1992, the 115th Legislature enacted Section W-1 of P.L. 1991, ch. 780, the so-called "Supplemental Appropriations" Act, which made adjustments to the State budget for the remainder of fiscal year 1992 and fiscal year 1993. Section W-1 directed the Maine State Retirement System to transfer \$3 million from the "surplus in the State Retiree Health Insurance Fund and State Retired Teachers' Health Fund to the Retirement Allowance Fund." This transfer was to occur shortly before the close of fiscal year 1992, that is before July 1, 1993. The State Controller (the official in charge of the Bureau of Accounts and Control) was then directed to reduce by \$3 million the June 1993 monthly payment to the State's health insurance carrier (Blue Cross and Blue Shield of Maine), and instead to make such a payment in July of 1993 whilst reducing the State's monthly payments to the Retirement System at that time by the same amount. In this way, the Legislature proposed to save \$3 million for the fiscal year 1993 budget, by in effect crediting to that budget a surplus which had accumulated in the Retirement System's health insurance funds. The amount of money involved was subsequently changed to \$4 million at the beginning of the First Regular Session of 116th Legislature. P. L. 1993 ch. 6, § E-2 .

The State Controller was therefore under a clear legislative direction to reduce the payments made by the General Fund to the Retirement System by \$4 million in July 1993. The problem which your question presents is whether this direction, which is contained in acts of the Legislature relating to fiscal year 1993, could have been undertaken by the Controller without further legislative authorization in the General Appropriations Act for fiscal year 1994.

Generally, appropriations to the Maine State Retirement System for State employees are not the subject of a specific legislative appropriation, but are included

within the personnel appropriations for each of the various State agencies.¹ After the general appropriation is made, the Retirement System calculates each month the number of State employees actually on the payroll of each agency and informs the State Controller as to the actual amount of money required to be paid by the General Fund in satisfaction of the employer contribution at the rates set by the Legislature. It was from the July 1993 payment that the \$4 million in issue was deducted. The General Appropriation Act of 1993, P.L. 1993, ch. 410 makes no specific reference to this particular deduction. Thus, it must be assumed that the deduction was made from the funds appropriated by the Act for retirement purposes which are contained in the personnel services appropriations of the various State agencies.

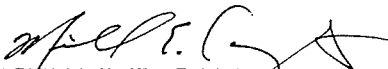
That being the case, the deduction of the \$4 million from the July 1993 payment by the State Controller violated the constitutional provision quoted above. That provision prohibits the Legislature from diverting or deappropriating funds once they have been appropriated to the Retirement System. As just indicated, in the General Appropriation Act of 1993, the Legislature made an appropriation of funds, through the personnel services portions of the budgets of the various State agencies to the Retirement System. In reducing a payment made pursuant to that appropriation, therefore, the State Controller was diverting to another purpose funds already appropriated to the Retirement System. The fact that the Controller took this action pursuant to Legislative authority enacted by a previous Legislature does not save its legality since, regardless of whether the prior Legislature had any constitutional authority to direct the Controller to take such action in a future fiscal year, the Legislature making the general appropriation for fiscal year 1994 was constitutionally required to make the direction anew, in view of the unreduced appropriation to the Retirement System which it made. Moreover, having once appropriated the money in question to the Retirement System, the 116th Legislature is now prohibited by Article IX, Section 18 of the Maine Constitution from directing the Controller to make the reduction.

In view of the foregoing, it is the opinion of this Department that the \$4 million in question should be refunded by the General Fund to the Retirement System. If the 117th Legislature, upon its convening in 1995, wishes to accomplish the reduction in fiscal year 1996, it may of course do so by including a specific provision to that effect in the General Appropriation Act for that year.

¹Appropriations to the Retirement System for teachers is traditionally made in a single appropriation for each of the two years of the biennium.

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

Sincerely,


MICHAEL E. CARPENTER
Attorney General

MEC:sw

cc: Governor John R. McKernan, Jr.
Senator Michael D. Pearson
Representative Lorraine N. Chonko
Chairs, Joint Standing Committee on Appropriations
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