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SPRINGFIELD



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FILE NO. S-1153

PENSIONS:

**State Universities Retirement
System Service Credit**

**Mr. Edward S. Gibala
Executive Director
State Universities Retirement System
P.O. Box 2710 - Station A
Champaign, Illinois 61820**

Dear Mr. Gibala:

I have your requests for my opinion as to two problems presented by legislative revisions of the Illinois Pension Code. The first concerns whether the trustees of the State Universities Retirement System should grant a University of Illinois employee's request, made subsequent to September 5, 1975, to purchase credit for his part-time employment at a public university in another state.

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Prior to September 5, 1975, as stated in your letter, the trustees of the State Universities Retirement System had accepted payment for other governmental (non-Illinois) employment, regardless of whether that employment was full-time or part-time. Effective September 5, 1975, the words "full-time" were added to Section 15-113(i) of the Illinois Pension Code (Ill. Rev. Stat. 1975, ch. 108 1/2, par. 15-113(i)) by P.A. 79-775 so that paragraph (i) reads in pertinent part:

"(i) those not to exceed the lesser of 10 years or 2/3 of the service granted under the other provisions of this Section, during which a person was employed full time by the United States government, or by the government of a state, or by a political subdivision of a state, or by an agency or instrumentality of any of the foregoing, * * *" (emphasis added.)

Your second request concerns P.A. 78-1184 which became effective September 5, 1974 and which added the following language to paragraph (i):

"This paragraph shall not apply to individuals who become participants in the system after September 1, 1974. Credit for military service under this paragraph shall be allowed only to those who are eligible for credit under this paragraph and have applied for such credit before September 1, 1974." (emphasis added.)

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A certain University of Illinois employee who has been a participant in the State Universities Retirement System since July 29, 1963 became disabled in November of 1970 and has been receiving disability benefits since December 2, 1970. This employee served on active duty in the United States Army from April 24, 1944 until December 31, 1945, but did not apply to purchase additional service credit upon his military service prior to September 1, 1974, the effective date of P.A. 78-1184.

In both requests, you have asked my opinion as to whether the statutory enactments altering the availability of service credit to certain plan participants are constitutional in view of section 5 of article XIII of the Illinois Constitution which provides as follows:

"Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired."

It is clear in both cases if the participants are not allowed to purchase additional credit, their retirement benefits will be less than otherwise would be the case had

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they elected to purchase additional credit prior to the effective dates of the statutory changes. The question thus arises whether such "diminishment" violates the enforceable contractual relationship created by section 5 of article XIII. I do not interpret these statutory changes to be prohibited by section 5 of article XIII.

This provision and the proceedings of the 1970 Illinois Constitutional Convention relevant to it have been considered by our Supreme Court in Peters v. City of Springfield, 57 Ill. 2d 142, and People ex rel. Illinois Federation of Teachers v. Lindberg, 60 Ill. 2d 266. In both of these cases the court held that section 5 of article XIII created a constitutional right only for those pension benefits which have been earned. The court in Peters ruled that this constitutional provision did not prevent the City of Springfield from reducing the mandatory retirement age of its policemen and firemen. At pages 151-52 the court said:

"From our review of the constitutional debates and the authorities, we conclude that the purpose and intent of the constitutional provision was to insure that pension rights of public employees which had been earned should not be 'diminished

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or impaired' but that it was not intended, and did not serve, to prevent the defendant City from reducing the maximum retirement age, even though the reduction might affect the pensions which plaintiffs would ultimately have received." (emphasis added.)

In Lindberg the court quoted the above language from Peters and held that section 5 of article XIII did not restrict the Governor's constitutional authority to reduce or veto a pension appropriation measure.

In order to earn credit for prior governmental service under paragraph (1) of section 15-113, a member must elect to make contributions for this service. P.A. 78-1184 and P.A. 79-775 did not change the requirement in paragraph (1) that members must make contributions for prior governmental service in accordance with paragraph (5) of section 15-157 of the Pension Code. (Ill. Rev. Stat. 1975, ch. 108 1/2, par. 15-157(5).) At the time each of these Acts became effective, paragraph (5) required members to elect to make contributions for the prior service credit authorized by paragraph (1) of section 15-113 before credit for such service could be received (Ill. Rev. Stat. 1973, ch. 108 1/2, par. 15-157(5)).

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Neither of the System participants in your two questions had elected to purchase credit for prior governmental service when the amendments altering the availability of prior service credit were enacted. Therefore, these employees did not have an earned right to this service credit when the amendments were enacted; the amendments thus did not diminish their earned pension rights. Because section 5 of article XIII of the Illinois Constitution protects only earned pension rights, P.A. 78-1184 and P.A. 775 did not violate the constitutional rights of these two employees. Hence, it is my opinion that the employee in your first question may not purchase credit for his prior part-time service and that the employee in your second question may not now purchase credit for military service under paragraph (i) of section 15-113 of the Pension Code.

Very truly yours,

A T T O R N E Y G E N E R A L