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SPRINGFIELD

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FILE NO. 81-005

**PENSIONS:**  
Applicability of Section 16-133  
of the Illinois Pension Code to  
Regional Superintendents of Schools

Honorable Thomas J. Difanis  
State's Attorney  
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Court House  
Urbana, Illinois 61801

Dear Mr. Difanis:

I have your letter wherein you inquire whether section 16-133 of the Illinois Pension Code (Ill. Rev. Stat. 1979, ch. 108 1/2, par. 16-133) applies to Regional Superintendents of Schools who are elected officials. You are particularly concerned with the language added to section 16-133, by Public Act 81-150, which excludes from the calculation of the average salary that part of the salary for any year which exceeded the previous year's salary by 20%. For the reasons hereinafter stated, it is my opinion that section 16-133, as amended by Public Act 81-150, applies to a regional

Honorable Thomas J. Difanis - 2.

superintendent of schools.

The provisions of section 16-133 of the Illinois Pension Code (Ill. Rev. Stat. 1979, ch. 108 1/2, par. 16-133) determine the retirement allowance for a member of the Teachers' Retirement System of the State of Illinois (Ill. Rev. Stat. 1979, ch. 108 1/2, par. 16-101 et seq.). Public Act 81-150 amended section 16-133 of the Code to read as follows:

"Age retirement allowance. (A) Except as herein otherwise provided, upon retirement for age a member shall receive an age retirement allowance consisting of:

\* \* \*

\* \* \* In the determination of average salary for retirement allowance purposes, for members retiring after August 31, 1979, that part of the salary for any year shall be excluded which exceeds the annual full-time salary rate for the preceding year by more than 20%. \* \* \*

\* \* \*

(Emphasis added.)

The primary purpose of the added language was to prevent inordinate salary increases just prior to retirement which would have a negative fiscal impact on the System. The provision, however, was written to apply to all members of the System.

Section 16-123 of the Illinois Pension Code (Ill. Rev. Stat. 1979, ch. 108 1/2, par. 16-123) defines membership in the Teachers' Retirement System as follows:

"Membership of system. (A) The membership of this system shall be composed as follows:

Honorable Thomas J. Difanis - 3.

(1) All persons who become teachers on or after July 1, 1939, who become members as a condition of employment on the date they become teachers.

\* \* \*

Sections 16-103 and 16-106(c) of the Code include a regional superintendent of schools in the definition of "teacher":

"§ 16-103. Terms defined. The terms used in this Article shall have the meanings ascribed to them in Sections 16-104 to 16-122, inclusive, except when the context otherwise requires."

"§ 16-106. Teacher. 'Teacher': \* \* \* .

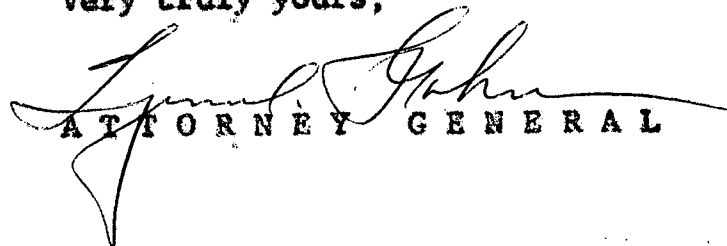
\* \* \*

(c) Any regional superintendent of schools, assistant regional superintendent of schools,  
\* \* \*

\* \* \*

It is well settled that a statute which is plain and unambiguous is not open for construction since the legislature should be considered to have intended to mean what it plainly expressed. (Bovinette v. City of Mascoutah (1973), 35 Ill. 2d 129, 133.) Therefore, a regional superintendent of schools, even though he is an elected officer, is a "member" of the Teachers' Retirement System and subject to the exclusion of the excess over 20% specified in section 16-133 of the Act.

Very truly yours,

  
ATTORNEY GENERAL