



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

ROGER W. TOMPKINS
ATTORNEY GENERAL

(304) 348-2021

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CONSUMER HOTLINE
(800) 368-8808

Glen B. Gainer, Chairman, and
Board of Trustees
West Virginia Public Employee
Retirement System
10th Floor, Building 5
State Capitol Complex
Charleston, West Virginia 25305

Dear Chairman Gainer:

As you and the other Board members are aware, controversy still surrounds the interpretation of Senate Bill 10 (1988) and the treatment of an early incentive retiree who may serve in an "appointive office" following early retirement. I have reviewed both House Bill 4672 and Senate Bill 10 (1988), and have discussed the application of the law with my Assistants James A. Swart and Lowell Greenwood, and feel fairly well briefed on the impact the Legislature created for the Public Employees Retirement System. This letter is written to you in the customary lawyer/client relationship.

In enacting Senate Bill 10 (1988) and adding W. Va. Code § 5-10-22c, the Legislature declared the early incentive retirement program as a compelling state interest for reduction of State government. Clearly, the purpose of the program was to reduce the actual number of employees on the governmental payrolls as well as the costs of running government.

To fulfill this purpose, W. Va. Code 5-10-22c(b) states, in pertinent part, "Any member participating in this retirement incentive program is not eligible to accept further employment from the state or any of its political subdivisions * * *" (Underlining added.) However, the Legislature carved out two specific exceptions to that prohibition (substitute teacher or an adjunct faculty member), and two general exceptions to the employment prohibition (those early retirees who serve in an "elective office" and those who serve in an "appointive office").

Under the statute, if an early retiree serves in an "elective office," whether part-time or full-time, salaried or non-salaried, three things occur:

1. He or she shall not receive an incentive annuity during the term of service in said office; and

2. He or she shall receive his or her regular annuity calculated on a basis as if originally taken; and

3. He or she shall rejoin and reenter the retirement system and pay contributions therefor, with such regular annuity re-calculated upon cessation of employment, and an increased regular annuity shall be granted.

The Legislature did not, however, enumerate such exact treatment for those early retirees who serve in an "appointive office." Reflecting on the prohibition of further employment with the State or any of its political subdivisions, it would appear that the Legislature was mindful of the pool of government knowledge and experience of the early retirees and felt that such a resource of personnel may very well serve State and local government in some capacity as an appointee to one of the numerous boards and commissions that are provided to help run State and local government.

Of course, two categories of employees are automatically created. The first category is an early retiree who is appointed to an office and receives a salary or per diem pay, and the second category is an early retiree who is appointed to an office and is not salaried and, not paid a per diem, but who is reimbursed for actual expenses. Since the Legislature did not specifically set forth treatment of those who serve in an "appointive office," I interpret such statutory language to encompass both categories of personnel.

Accordingly, I offer the following:

1. If an early incentive retiree serves in an "appointive office" without salary and without a per diem pay, and only reimbursed expenses, the following will occur:

A. He or she shall not receive an incentive annuity during the term of service in said office, but the same shall be suspended during such period and resumed upon termination of the appointment; and

B. He or she shall receive his or her regular annuity calculated on a basis as if originally taken; and

C. He or she shall not be eligible to rejoin and reenter the retirement system and pay contributions therefor.

2. If an early incentive retiree serves in an "appointive office" with a salary or with per diem pay, the following will occur:

A. He or she shall not receive either the incentive annuity or a regular annuity during the term of service in said office, but the same shall be suspended during such period and resumed upon termination of the employment; and

B. He or she shall rejoin and reenter the retirement system and pay contributions therefor. (This is in accord with Code 5-10-48(b)(2).)

Please note, if a salaried or per diem appointee selects to waive the pay, he or she would be considered as non-salaried or non-per diem, and fall into category 1-ABC above.

Although the time has closed for new entrants into the class of early incentive retirees, the application of the law with regard to "elective offices" and "appointive offices" will continue for the lifetime of those early retirees who have already qualified. Hence, a proper interpretation of the statutory language and consistent application thereof is necessary.

In a related matter, the continuation of health care coverage through the Public Employees Insurance Agency for early retirees is not contingent upon the retiree actually receiving retirement benefits. Once an early retiree qualifies under that program and is so notified by the Public Employee Retirement System, that retiree is entitled to the continuation of health care coverage, at his option, pursuant to W. Va. Code § 5-16-12(h), which reads:

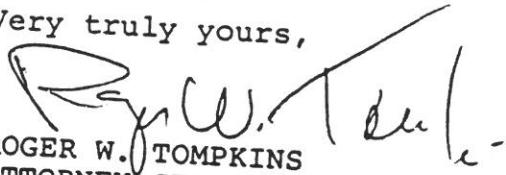
"All retirees under the provisions of this article, including those defined in section two of this article; those retiring prior to the 21st day of April, 1972; and those hereafter retiring, shall be eligible for and permitted to obtain health insurance coverage. The premium cost for any such coverage as established by the public employees insurance board, shall be borne by such retired employee."

Under the language quoted, a retiree may option to have the premium cost deducted from his annuity, if he is receiving same,

or he may pay the premium cost directly to the Public Employees Insurance Board if he is not receiving an annuity.

I trust that this letter will assist you in your determination of eligibility and economic treatment of those early retirees discussed above.

Very truly yours,


ROGER W. TOMPKINS
ATTORNEY GENERAL

RWT/JAS/cln