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#94085
NO.
STATE OF NEBRASKA
OFFICIAL
NOV 10 1994
DEPT. OF JUSTICE

DATE: November 3, 1994

SUBJECT: County Employees Retirement Act; Termination Benefits

REQUESTED BY: James Cashin, Director
Public Employees Retirement Systems

WRITTEN BY: Don Stenberg, Attorney General
Fredrick F. Neid, Assistant Attorney General

You have requested "clarification" of certain provisions of the County Employees Retirement Act, Neb. Rev. Stat. §§ 23-2301 to 23-2332 (1991, Cum. Supp. 1992, and Supp. 1993), regarding withdrawal of amounts from employee and employer accounts upon termination of employment by a member of the County Employees Retirement System.

The specific issue your question raises is whether a member who terminates his or her employment may withdraw the employer account amounts in a lump sum prior to age fifty-five. You indicate that the Board interprets applicable statutes to <u>require</u> deferral of a lump sum disbursement of the employer account amount until age fifty-five.

Based on our review of Neb. Rev. Stat. § 23-2319 (Supp. 1993), we believe that the Board's interpretation is a reasonable construction of the statutory provisions.

Termination benefits of a member prior to age fifty-five are set forth in Neb. Rev. Stat. § 23-2319 (Supp. 1993) which provides:

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(1) Any member of the retirement system who ceases to be an employee before his or her fifty-fifth birthday may, upon application, receive from the primary carrier:

(a) If not vested, a termination benefit not to exceed the amount of his or her employee account (i) payable in a lump sum or (ii) payable in a lump sum deferred no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years;

(b) If vested, a termination benefit not to exceed (i) the amount of his or her employee account payable in a lump sum plus a paid-up deferred annuity provided by his or her employer account under which the first annuity payment shall be made no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years, (ii) the amount of the employee account payable in a lump sum plus a lump sum of the employer account deferred no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years, or (iii) the total amount of the employee account and the employer account payable in a lump sum deferred no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years; or

(c) A paid-up deferred annuity provided by the employee account and, if vested, the employer account under which the first annuity payment shall be made no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years.

If the terminating member does not make such application, he or she shall receive the benefits provided under subdivision (1)(c) of this section.

(2) At the option of the terminating member, any lump sum of the employer account or any paid-up deferred annuity provided under subsection (1) of this section may commence as of the first of the month at any time after such member attains the age of fifty-five years and no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years. Such election by the terminating member may be made at any time prior to the commencement of the annuity payments. Such paid-up deferred annuity shall be the actuarial equivalent, as determined by the group annuity

> contract, of the employee account together with the vested percentage of the employer account.
>
> (3) The vesting percentage shall be one hundred after five years of participation. The vesting percentage shall be one hundred after five years of participation. The vesting percentage shall equal one hundred for any disability retirement under section 23-2315.
>
> (4) If the terminating member is not credited with one hundred percent of his or her employer account, the remainder shall first be used to meet the expense charges incurred by the board in connection with administering the system, and the remainder shall then be used to reduce the county contributions which would be otherwise required to fund future service retirement benefits.

(Emphasis added).

Briefly summarized, a vested employee prior to age fifty-five is provided three options for payment of the termination benefit under Neb. Rev. Stat. § 23-2319. The employee may elect:

1. The amount of the employee account payable in a lump sum and a paid-up deferred annuity funded by employer account amounts [§ 23-2319(1)(b)(i)];

2. The amount of the employee account payable in a lump sum and a lump sum payment of the employer account amount deferred no later than the "sixtieth day after the end of the year in which the member attains the age of seventy and one-half years" [§ 23-2319(1)(b)(ii)]; and,

3. The amounts of the employee and employer accounts payable in a lump sum deferred no later than the "sixtieth day after the end of the year in which the member attains the age of seventy and one-half years" [§ 23-2139(1)(b)(iii)].

The statutory language authorizes payment of the employer account in a lump sum payment deferred no later than the year in which the terminating member attains age seventy and one-half (70-1/2). Further, a terminating member may elect to receive lump sum disbursement of the employer account commencing at age fifty-five (55).

The provisions of Neb. Rev. Stat. § 23-2319 were amended by LB 417 in 1993 to provide for lump sum withdrawal of employer

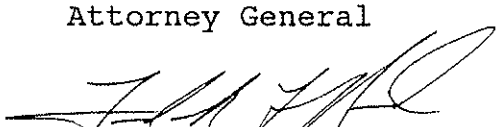
accounts. The legislative history has been reviewed and the history does not reflect that the Legislature intended that terminating members receive lump sum payment of employer accounts prior to the member attaining age fifty-five. Generally, courts in applying or construing statutory language seek to determine legislative intent from the language of the statute itself. ***Application of Jantzen***, 245 Neb. 81, 511 N.W.2d 504 (1994); ***State ex rel. Douglas v. Marsh***, 207 Neb. 598, 300 N.W.2d 181 (1980). Further, where the intent of the Legislature in the enactment of legislation is clearly expressed, courts are duty bound to accept that expression. ***See Anderson v. Autocrat Corp.***, 194 Neb. 278, 231 N.W.2d 560 (1975).

For these reasons, it is our opinion that the interpretation of the Retirement Board is consistent with the statutory provisions, and a court would uphold the Board's construction.

You note that the Retirement Plan for State Employees includes similar provisions regarding termination benefits for members terminating their employment prior to age fifty-five. Neb. Rev. Stat. § 84-1321 (Supp. 1993) includes identical provisions for state employees terminating their employment. Accordingly, our conclusion is the same, that is, we perceive no statutory language that authorizes lump sum withdrawal of employer accounts by terminating members prior to age fifty-five.

Sincerely,

DON STENBERG
Attorney General



Fredrick F. Neid
Assistant Attorney General

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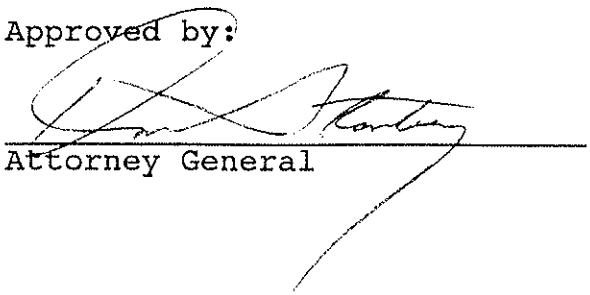

Attorney General