

Opinion No. 88-22

March 22, 1988

OPINION OF: HAL STRATTON, Attorney General

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QUESTIONS

Which public retirement act's suspension provisions apply to a retiree, receiving a benefit disbursed by the public employees retirement association pursuant to the Retirement Reciprocity Act, who resumes employment with the University of New Mexico, a state institution whose employees are, for retirement purposes, covered exclusively under the Educational Retirement Act?

CONCLUSIONS

The suspension provisions of the Public Employees Retirement Act ("PERA"), Sections 10-11-1 to 10-11-140 NMSA 1978 (Repl. 1987), apply.

ANALYSIS

The Retirement Reciprocity Act ("Reciprocity Act"), Sections 10-13-1 to 10-13-5 NMSA 1978, applies when a member leaves a position covered by the public employees retirement association ("retirement association") and becomes employed in a position covered by the educational retirement system, or vice versa. Such a member acquires "reciprocal service credit," i.e., service credit under the retirement association and under the educational retirement system, to "be used in satisfying the service requirements for superannuation retirement under the state system from which he retire[s]." Section 10-13-4(B). "State system" means the retirement association or the educational retirement system. Section 10-13-2(A). The Reciprocity Act extends "to public employees the benefit of increased retirement credit irrespective of the particular state retirement system the individual may have been employed under, and ... permit[s] an individual to receive greater retirement advantages than would otherwise be possible under either of the single state retirement systems." Att'y Gen. Op. 64-118.

If a member with reciprocal service credit retires under the retirement association:

[H]e shall receive an annuity payable by the retirement association and an annuity payable by the educational retirement system. His annuity payable by the retirement association shall be computed based upon (1) the portion of his reciprocal service credit acquired as a member of the retirement association, and (2) his association final

average salary. His annuity payable by the educational retirement system shall be computed based upon (1) the portion of his reciprocal service credit acquired as a member of the educational retirement system, and (2) his educational final average salary.

Section 10-13-4(C). If a member with reciprocal service credit retires under the educational retirement system, each system calculates its portion of the member's benefit in the same manner. Section 10-13-4(D). "The state system from which a member with reciprocal service credit retires shall be the disbursing agent for his annuities," Section 10-13-5, and the non-disbursing system reimburses the disbursing system for the non-disbursing system's share of the member's benefit. Id. The non-disbursing system commences payment of its share when the member retires, provided the member could have retired on or before that date had all his service been as member of the non-disbursing system. Sections 10-13-4(C) and (D).

Under the Reciprocity Act, PERA and the Educational Retirement Act ("ERA"), Sections 22-11-1 to 22-11-45 NMSA 1978 (Repl. 1986), do not address directly suspension of benefits granted pursuant to the Reciprocity Act. However, the suspension provision of Section 10-11-8(C) NMSA 1978 would apply to a PERA retiree who resumed employment with the University of New Mexico, which is an ERA employer, when he earned the maximum allowed by that section. Att'y Gen. Op. 87-79. That maximum is one-hundred percent of the amount that causes a decrease or suspension of an old age benefit under the federal social security program (currently, \$8,400). A retiree using the Reciprocity Act and his "reciprocal service credit" to satisfy PERA's service credit requirements to retire, retires "under the retirement association." Section 10-13-4(E) limits the annuity that the retirement association pays to an amount which, in combination with the amount that the educational retirement system pays, will produce a total benefit that does not exceed the benefit that the retirement association otherwise would pay if all the retiree's service credit had been under PERA. The converse limit applies where a member uses the Reciprocity Act to retire under the educational retirement system. See Section 10-13-4(F). We discern a legislative intent in these provisions to limit a retiree's benefits to the maximum the disbursing system would allow if the retiree had earned all his service credit with the disbursing system. Therefore, the disbursing system's suspension provisions, which establish benefit limits if the retiree returns to work, logically should apply as well.

Applying PERA's suspension provision, Section 10-11-8(C), to a reciprocity retiree retired under PERA permits fair treatment among members and avoids administrative inconvenience caused by applying each system's suspension of benefits provisions to that system's respective portion of a reciprocity retiree's benefits. This application also avoids an anomalous result in which the disbursing system might disburse only the other system's benefits. For example, if the reciprocity retiree in the situation upon which we opine were retired under ERA, the educational retirement system would discontinue benefits when he earned \$4,800 (unless his employment contract provided for earnings exceeding that amount, in which case, his benefits would cease

immediately upon reemployment),¹ but his retirement association's benefits would not cease until he had earned \$8,400.

Accordingly, we advise that PERA's suspension provisions apply to the benefits granted pursuant to the Reciprocity Act to a member retired under PERA who resumes employment with the University of New Mexico.

ATTORNEY GENERAL

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GENERAL FOOTNOTES

[n1](#) See Educational Retirement Board Rule VII(B)(1).