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STATE CAPITOL
PHOENIX, ARIZONA

September 24, 1968

DEPARTMENT OF LAW OPINION NO. 63-20 (R-107)

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REQUESTED BY: THE HONORABLE JEWEL JORDAN, State Auditor

QUESTION: Does A.R.S. § 38-848 constitute a valid appropriation of funds for payment of administrative expenses of the new Public Safety Personnel Retirement System?

ANSWER: Yes.

The new retirement system was established by Chapter 85, Laws of 1968, and contemplates the transfer of assets from former retirement systems to the new combined fund manager. A.R.S. § 38-848.B provides:

"B. All contributions under this system shall be forwarded to the fund manager and shall be held, invested and reinvested by the fund manager. All property and funds of the fund, including income from investments and from all other sources, shall be retained for the exclusive benefit of members, as provided in the system, and shall be used to pay benefits to members or their beneficiaries, or to pay expenses of operation and administration of the system and fund."

A.R.S. § 38-848.F provides:

"F. An expense account shall be maintained for the system by the fund manager. The account shall be credited with all contributions of employers for the purpose of meeting their respective proportion of the total operation and administrative expenses of the system during each fiscal year, and it shall be charged with all disbursements for operation and

administrative expenses incurred by the system. The surplus or deficiency of this account at the end of the year shall be used in determining the expense rate applicable for the following fiscal year. Investment expenses shall be accounted for separately and allocated against investment income."

A.R.S. § 38-848.J provides:

"J. As of the date of the establishment of the retirement system, the actuary shall make such investigation of the mortality, service and compensation experience of the members of the system as the fund manager shall authorize, and on the basis of such investigation he shall recommend for adoption by the fund manager such tables as are required for the appropriate actuarial valuation of the system. As soon as practicable after the adoption of the actuarial tables, the actuary shall make a valuation based on such tables, of the assets and liabilities of the funds created by the system, and prepare a report to each employer showing the contributions sufficient to meet both the normal cost on a level cost method and the prescribed interest on the past service cost for its members."

A.R.S. § 38-848.L provides:

"L. On the basis of such tables as the fund manager shall adopt, the actuary shall make a valuation of the assets and liabilities of the funds of the system not less frequently than each two years. The actuary's report shall stipulate the contributions requirement of each employer participating in the system, provided that during fiscal years 1968-1969, and 1969-1970, employers shall not be required to contribute a percentage

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which would exceed the percentage which would have been contributed if the same percentage of payroll as contributed to existing pension systems by such employers in 1967-1968 were applied to the payrolls in 1968-1969 and 1969-1970."

Thus, the new system provides for transfer of existing retirement system assets to the fund manager, for contributions from employees, and for contributions by the employers in the system. The employers' contributions are limited during fiscal years 1968-1969, and 1969-1970, to no more than the percentage of payroll contributed by the employers to existing systems in 1967-1968.

Article 9, Section 5 of the Arizona Constitution provides: "No money shall be paid out of the state treasury, except in the manner provided by law." The Legislature has specified that no money can be paid from the State Treasury unless the Legislature (or the Constitution) has made an appropriation therefor. A.R.S. §§ 35-152, 35-154, 35-181.01; McDougall v. Frohmiller, 61 Ariz. 395, 150 P.2d 89.

The Arizona Supreme Court in Hunt v. Callaghan, 32 Ariz. 235, 239, 240, 257 Pac. 648 (1927) defined an appropriation as:

". . . the setting aside from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more for that object, and no other."

An appropriation need not be made in any particular form of words nor in express terms. All that is required is a clear expression of legislative will on the subject. Arizona Teachers' Retirement System v. Frohmiller, 60 Ariz. 490, 140 P.2d 615; Crane v. Frohmiller, 45 Ariz. 490, 45 P.2d 955; Crawford v. Hunt, 41 Ariz. 229, 17 P.2d 802. Thus, as stated by the court in Crawford v. Hunt, supra, at p. 234, "No

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special form of language is required to make an appropriation. If it be the intent of the appropriating body that the money in question be paid, it makes no difference in what terms such intent is expressed."

In order to constitute a valid appropriation payable out of the state's general fund the measure must fix at least a maximum amount beyond which the appropriation cannot go. Eide v. Frohmiller, 70 Ariz. 128, 216 P.2d 726; Crane v. Frohmiller, 45 Ariz. 490, 45 P.2d 955; Cockrill v. Jordan, 72 Ariz. 318, 235 P.2d 1009. However, if the appropriation is payable only from a special fund which is itself limited in amount, no limit need be stated or ascertainable in the act itself. Thus, the court in Crane v. Frohmiller, supra, at p. 499, stated:

"We hold, therefore, that, in order to constitute a valid appropriation by the legislature, it must, if the appropriation is to be paid from the general fund, fix at least a maximum amount beyond which such appropriation may not go, although, if the payment is to be made only from a special fund which is itself limited in amount, no limit need be stated in the act authorizing the expenditures and specifying for what purpose the money is to be expended."

The Public Safety Retirement System Act provides for the creation of a special fund consisting of contributions from employees and employers, and investment income. The only state agency presently participating as an employer in the System is the Highway Patrol. Its contribution is not appropriated by the Act directly from the general fund, but is included within the appropriation to the Highway Patrol, subdivision 85, Chapter 206, Laws of 1968. Sub-sections B and F of § 38-848 are apparently intended to affect the means for a transfer of some of the funds appropriated to the Highway Patrol to the Public Safety Personnel Retirement System fund for the specified purposes of paying benefits to members

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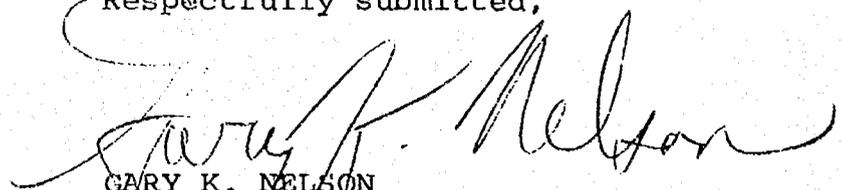
or their beneficiaries, and paying expenses of operation and administration of the System and the fund. It should be noted that the amount of the state employer's contribution is thus limited both by the amount of the Highway Patrol's appropriation in the General Appropriation Act and also by the limitation of A.R.S. § 38-848.L cited above.

In Arizona Teachers' Retirement System v. Frohmler, supra, the Arizona Supreme Court upheld, as a valid appropriation, a provision in Chapter 61, Laws of 1943, which established the Teachers' Retirement System, and stated at p. 492:

"It is not apparent how more apt language than this could be chosen for making appropriation: There shall be transferred to the Arizona teachers' retirement system for the purpose of carrying out the provisions of this Act, and then stating the amounts transferred to the respective funds for that purpose, one of them being the expense fund, from which all expenses of administration and operation shall be paid. Section 16(h). Transferring it to the expense fund had the effect of placing it in that fund, and the expression 'for the purpose of carrying out the provisions of this act' states exactly what it was transferred for. What else could be added to constitute an appropriation?"

It is our opinion, based on the foregoing authorities, that there is a valid appropriation made by A.R.S. § 38-848 for the purpose, among other things, of paying the administrative expenses of the fund.

Respectfully submitted,


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The Attorney General

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