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June 18, 1975

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ARIZONA ATTORNEY GENERAL

Arizona State Retirement System Board
Post Office Box 4305
Phoenix, Arizona 85030

Gentlemen:

We are writing in response to your request for our opinion on the following question:

With respect to participants whose employment is terminated on July 1, 1975 and who are eligible for retirement on July 1, 1975, may payment of a normal or early retirement benefit commence on July 1, 1975 under the State Retirement Plan?

With respect to normal retirement, the answer to your question appears in A.R.S. § 38-781.30 and A.R.S. § 38-781.07.A as follows:

"Retirement" means the receipt of retirement benefits after the participant has made an application therefor, has terminated employment and has fulfilled all requirements for a pension. Retirement shall be considered as commencing on the first day of the month for which retirement benefit is paid. A.R.S. § 38-781.01.30

. . . Payment of a normal pension shall commence as of the first day of the month coinciding with or next following the date of retirement, and the last payment thereof shall be made as of the first day of the month in which the death of the retired member occurs.
[Emphasis added] A.R.S. § 38-781.07.A

From the foregoing we have concluded that the Arizona State Retirement System Board is authorized to commence paying normal retirement pensions on July 1, 1975 to participants who have made application therefor, whose employment terminates on July 1, 1975 and who have fulfilled all the requirements therefor on July 1, 1975.



With respect to early retirement, please refer again to A.R.S. § 38-781.01.30 supra and to A.R.S. § 38-781.08, as amended effective July 1, 1975, as follows:

A participant shall be eligible to elect early retirement providing he has twenty years of total credited service and has attained the age of fifty years or attainment of age sixty-two but has not attained his normal retirement date. Such an election in a form and manner prescribed by the board shall take place on the first day of the month and year designated in such request. A participant electing early retirement shall accrue a benefit as determined in § 38-781.07. A benefit so determined shall be payable at the normal retirement date. A participant electing early retirement may also choose a reduced retirement income commencing at any date subsequent to the date of his retirement and prior to the normal retirement date. Such reduced retirement income shall be determined by reducing at the rate of three per cent per year from age sixty to age sixty-five and five per cent per year from age fifty through age sixty the early retirement benefit which the participant may elect payable at the normal retirement date.

In the early retirement class, there are two categories of pension payments--(a) pensions calculated at the normal pension rate with payments deferred until normal retirement date which, under A.R.S. § 38-781.01.23, as amended effective July 1, 1975, is the first day of the calendar month immediately following an employee's sixty-fifth birthday and (b) pensions calculated at a reduced rate with payments commencing at any date subsequent to the date of retirement, but prior to the normal retirement date.

Participants who elect early retirement under category (a) above and who terminate their employment on July 1, 1975, would not be entitled to receive pension payments until

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they reach normal retirement date which, of course, would be subsequent to July 1, 1975.

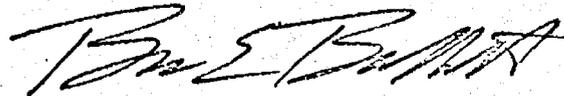
Participants who elect early retirement under category (b) above, on the other hand, are entitled to receive pension payments "commencing at any date subsequent to the date of . . . retirement." A.R.S. § 38-781.08. In this instance, it appears that the Legislature intended that pension payments could commence at any date subsequent to termination of employment and fulfillment of all requirements for a pension. Therefore, participants who terminate employment on July 1, 1975, under an early retirement election to receive a reduced pension would be entitled to begin receiving pension payments at any date subsequent to July 1, 1975.

You also have asked the following question:

May participants whose employment terminate prior to July 1, 1975, by reason of expiration of contract or otherwise, be re-employed on July 1, 1975, but not thereafter and be eligible for a normal or early retirement benefit calculated at the rate provided in Chapter 167, Laws of 1974, which becomes effective on July 1, 1975?

Legislation is currently pending on the subject matter of your second question, and until the legislation passes or the Legislature adjourns an answer to that question would be premature.

Very truly yours,



BRUCE E. BABBITT
Attorney General

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