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March 14, 1978

Mr. Vernon L. Hoy, Director
Arizona Department of Public Safety
Post Office Box 6638
Phoenix, Arizona 85005

LAW LIBRARY
ARIZONA ATTORNEY GENERAL
Re: 78- 53 (R77-201)
(corrected)

Dear Mr. Hoy:

This letter is in response to your letter dated June 6, 1977, in which you posed the following questions concerning certain of your officers:

1. May an officer who first served as a city policeman, then served as a narcotics law enforcement officer with the Department of Liquor Licenses and Control, and thereafter served with the Narcotics Division of the Department of Law prior to his transfer to the Department of Public Safety--and whose employee contributions made to the State Retirement System during his employment with the Department of Liquor Licenses and Control were refunded to him at the time of his becoming employed with the Narcotics Division of the Department of Law--redeem the period of service with the Department of Liquor Licenses and Control and receive credit therefor toward retirement under the Public Safety Personnel Retirement System?

2. If the officer may redeem his service with the Department of Liquor Licenses and Control, should interest be computed only to the day and at the same rate at which he redeemed his service with the city?

We understand that your question arises from the following circumstances. A municipal policeman terminated his employment with a city and withdrew his contributions to the pension system covering his city employment. The individual then became employed by the State of Arizona in the Department of Liquor Licenses and Control to enforce the State's narcotics laws.¹ As a narcotics laws enforcement officer with that department, he became a member of and made contributions to the State Retirement System (A.R.S. § 38-741 et seq.).

1. See A.R.S. § 4-112, as amended by 1961 Ariz. Sess. Laws, 1st Spec. Sess. Ch. 2, § 2 and A.R.S. § 36-1019, as amended by 1961 Ariz. Sess. Laws, 1st Spec. Sess. Ch. 1, § 4.

In 1967, the Legislature enacted 1967 Ariz. Sess. Laws, Ch. 133, the effect of which was to remove from the Department of Liquor Licenses and Control and place within a newly created Narcotics Enforcement Division of the Department of Law the enforcement of the State narcotics laws.² On July 1, 1967, the effective date of Chapter 133, the narcotics laws officer transferred from the Department of Liquor Licenses and Control to the Narcotics Enforcement Division of the Department of Law. The Arizona State Retirement System terminated the officer's membership in the System and refunded to the officer his employee contributions for the period of his employment in the Department of Liquor Licenses and Control. The State Retirement System simultaneously opened a new retirement account for the officer into which he paid contributions for the period of his employment in the Narcotics Enforcement Division of the Department of Law.

The following year the Legislature enacted 1968 Ariz. Sess. Laws, Ch. 85 which established the Public Safety Personnel Retirement System to provide a uniform retirement system for law enforcement officers. The Legislature also enacted 1968 Ariz. Sess. Laws, Ch. 209, as amended by 1968 Ariz. Sess. Laws 4th Spec. Sess., Ch. 3, which, among other things, established the Department of Public Safety with a Division of Narcotics Enforcement and Criminal Intelligence and removed from the Department of Law to the Department of Public Safety the Division of Narcotics Enforcement and Criminal Intelligence and its responsibility for enforcement of the State's narcotics laws.

On July 1, 1969, when the Department of Public Safety became operative, the narcotics laws enforcement officer transferred from the Narcotics Enforcement Division of the Department of Law to the Narcotics Enforcement and Criminal Intelligence Division of the Department of Public Safety. At the same time the narcotics laws enforcement officer's membership and account in the State Retirement System were transferred to the Public Safety Personnel Retirement System with full service credit for July 1, 1967 to July 1, 1969.

Acting under 1974 Ariz. Sess. Laws, Ch. 168 and 1975 Ariz. Sess. Laws, Ch. 146, the officer, prior to June 30, 1976, sought to redeem all of his service as a city policeman and as a narcotics laws enforcement officer with the Department of Liquor Licenses and Control. He redeemed his city police service but was denied redemption of his service with the Department of Liquor Licenses and Control.

In your letter you refer only to the redemption provisions of 1974 Ariz. Sess. Laws, Ch. 168. That provision, which would have expired by its own terms on December 1, 1975, was specifically repealed by 1975 Ariz. Sess. Laws, Ch. 146, § 2. Section 1 of Chapter 146, Laws of 1975, established new eligibility requirements under which members of the Public Safety Personnel Retirement System could redeem prior service with other employers in the System. However, subsection C of that section provides that those redemption provisions "shall expire on June 30, 1976."

2. See A.R.S. § 41-196 and A.R.S. § 36-1019, as amended by 1967 Ariz. Sess. Laws Ch. 133, § 29.

When an act expires by its own limitations, it ceases to operate and the effect is as though it had been repealed at that time. Brown v. State Election Board, 369 P.2d 140 (Okla. 1962); Cunningham v. Smith, 53 P.2d 870 (Kan. 1936). Currently, no provision is in effect for redemption of prior service in the Public Safety Personnel Retirement System, the Legislature having passed no laws in this respect since 1975.

However, because the officer did apply for redemption of service prior to the expiration date of June 30, 1976, it is still necessary to determine whether the officer is entitled to redeem the service involved under the 1974 or 1975 laws. If that inquiry shows that the officer was entitled to redeem the service with the Department of Liquor Licenses and Control, the issue then becomes whether he still may do so even though the 1975 redemption law has expired.

1975 Ariz. Sess. Laws, Ch. 146, § 1.A sets forth the eligibility requirements for redemption of prior service. In Att'y. Gen. Op. No. 76-94 (R75-690) (March 19, 1976) we explained section 1 as follows:

Specifically, the eligibility requirements of subsection A are;

1. The employee must be a present active member of the Public Safety Personnel Retirement System.
2. The member must be employed by the State or by a city, town or county, the governing body of which has, by resolution, authorized such prior service credit for eligible employees pursuant to the provisions of this subsection.
3. The member must have had previous service in the State of Arizona as a police officer, fireman, deputy sheriff or highway patrolman.
4. The previous service employer must now be covered by the Public Safety Personnel Retirement System.
5. The member's previous service must have been rendered prior to the effective date of the Public Safety Personnel Retirement System, as defined by A.R.S. § 38-842, meaning that while the member was working at that previous employment, his previous service employer was not then covered by the Public Safety Personnel Retirement System.
6. The member must have terminated the previous employment and received a severance benefit from the Fireman's Pension and Relief Fund, Police Pension Fund, State Highway Patrol Retirement Fund or the State Retirement System or Plans upon such termination.
7. Termination of the previous employment must have occurred prior to the effective date of the Public Safety Personnel Retirement System as to such previous employer.

In all elements essential to this opinion, the eligibility requirements of 1974 Ariz. Sess. Laws, Ch. 168, § 1 are substantially similar.

Under these laws the critical provisions are numbers 3 and 4 above. In this regard the 1974 Act requires that the applicants have:

" . . . previous service as police officers, firemen, deputy sheriffs or highway patrolmen with employers now covered by the system . . . "

And the 1975 Act requires that applicants have:

" . . . previous service in the State of Arizona as police officers, firemen, deputy sheriffs or highway patrolmen with employers now covered by the public safety personnel retirement system. . . . "

The previous service of the narcotics laws enforcement officer with the Department of Liquor Licenses and Control was not service as a fireman, deputy sheriff or highway patrolman. Whether the previous service was as a police officer depends upon the meaning ascribed to the term "police officer." From our review of the provisions of the Public Safety Personnel Retirement System (A.R.S. §§ 38-841 et seq.) and the predecessor Police Pension Law (A.R.S. §§ 9-991 et seq.) it is difficult to determine whether the Legislature meant to include only members with previous service as members of municipal police departments or the broader category of law enforcement officers other than deputy sheriffs and highway patrolmen. For purposes of determining eligibility for redemption only, we are inclined to ascribe to the term "police officer" the broader meaning in order to achieve the obvious intention of the Legislature to permit present law enforcement officers to redeem previous law enforcement service.

The more difficult question is whether the officer's previous service was with an employer now covered by the Public Safety Personnel Retirement System. Upon considering whether the appointment of a person who previously had retired under the Public Safety Personnel Retirement System to the position of Superintendent of the Department of Liquor Licenses and Control was "reemployment" by an employer (which would have suspended his receipt of benefits during such reemployment) we recently said:

"His present employer, the State of Arizona, acting through the Department of Liquor Licenses and Control, in order to be considered an "employer" within the purview of A.R.S. § 38-842.12, . . . must have elected to participate in the System on behalf of an eligible group of employees pursuant to a joinder agreement . . . , inasmuch as neither a city nor the State Highway Patrol (now a division of the Department of Public Safety) is involved in the reemployment. . . . Although the State of Arizona has elected to participate in the System on behalf of various groups of employees, the State has not elected to participate in the System on behalf of any of its employees in the Department of Liquor Licenses and Control. We doubt, therefore, that the State is an "employer" under A.R.S. §§ 38-842.12 and 38-849.E with respect to the Department of Liquor Licenses and Control."

Att'y. Gen. Op. No. 77-237 (R77-351) (December 16, 1977).

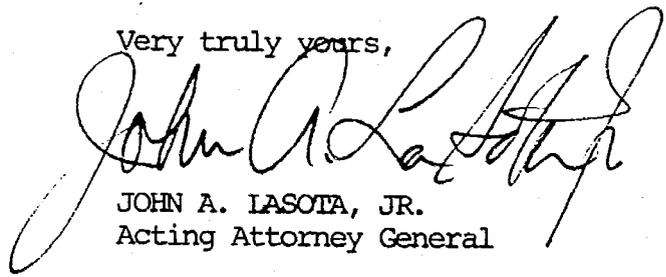
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If narcotics laws enforcement still were the responsibility of the Department of Liquor Licenses and Control, we should not hesitate to say that the narcotics laws enforcement officer's previous employer is not now covered by the Public Safety Personnel Retirement System, thereby disqualifying the officer from redemption of his previous service with that agency. However, narcotics laws enforcement now is the responsibility of the Department of Public Safety, Division of Narcotics Enforcement and Criminal Intelligence, and the State of Arizona has elected to participate in the Public Safety Personnel Retirement System on behalf of the narcotics laws enforcement officers in the Division of Narcotics Enforcement and Criminal Intelligence. Under this unique set of circumstances, we think that the narcotics laws enforcement officer's previous employer is covered by the Public Safety Personnel Retirement System within the meaning of 1975 Ariz. Sess. Laws, Ch. 146 and 1974 Ariz. Sess. Laws, Ch. 168.

Given that the officer had done everything that was required of him under the 1974 and 1975 Acts to redeem his previous service prior to June 30, 1976, in our opinion the officer's rights became fixed at that time and he, therefore, is entitled to redeem his previous service with the Department of Liquor Licenses and Control notwithstanding that the deadline for redemption now has passed. See A.R.S. § 1-249; King v. Uhlmann, 103 Ariz. 136, 437 P.2d 928 (1968).¹

The answer to your second question deals with a matter to be determined in the first instance by the Fund Manager of the Public Safety Personnel Retirement System. For that reason we think it appropriate to defer the question to that body.

Very truly yours,


JOHN A. LASOTA, JR.
Acting Attorney General

JAL:kd

1. A.R.S. § 1-249 provides:

No action or proceeding commenced before a repealing act takes effect, and no right accrued is affected by the repealing act, but proceedings therein shall conform to the new act so far as applicable.