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ARIZONA ATTORNEY GENERAL

The Honorable Clark R. Dierks
Arizona State Treasurer
West Wing, State Capitol
1700 West Washington
Phoenix, AZ 85007

Re: I79-267 (R79-251)

Dear Mr. Dierks:

We are writing in response to your request dated September 7, 1979, seeking our advice on the proper course of action for you to follow in responding to the request of the Arizona State Retirement System ("System") that you satisfy from the State treasury the System's claims against various political subdivisions of the State for late charges incurred by the political subdivisions as a result of their delinquencies in forwarding employer and employee contributions to the System.

The request of the System is based upon the provisions of A.R.S. §§ 38-752.G and 38-781.20.J. The first provision, which applies to the State Employees Retirement System, states:

Payments provided under this article for state department and payments due from any county, municipality or political subdivision establishing a retirement system administered by the system pursuant to the provisions of this article, shall become delinquent after the due date as provided in § 38-847, subsection D and shall thereafter be increased by interest at the rate of 8% per annum from and after such date until payment is received by the system. Delinquent payments due under this subsection, together with interest charges as provided in this subsection, may be recovered by action in a court of competent jurisdiction against the political subdivision liable for the payments or may, at

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the request of the director, be deducted from any other monies including excise revenue taxes payable to such political subdivision by any department or agency of this state.

A.R.S. § 38-781.20.J, which applies to the Retirement Plan, provides:

Payments provided under this article for state departments and payments due from any county, municipality or political subdivision establishing a retirement plan administered by the plan pursuant to the provisions of this article, shall become delinquent after the due date as provided in § 38-781.14 and shall thereafter be increased by interest at the rate of 8% per annum from and after such date until payment is received by the plan. Delinquent payments due under this subsection, together with interest charges as provided in this subsection, may be recovered by action in a court of competent jurisdiction against the political subdivision liable for the payments or may, at the request of the director, be deducted from any other monies including excise revenue taxes payable to such political subdivision by any department or agency of this state.

These statutes, insofar as they concern your request, by their terms are applicable to any county, municipality or political subdivision establishing a retirement program administered by the System. The statutes by their terms subject all monies payable by the State to any county, municipality or political subdivision establishing a retirement program administered by the System to payment of delinquent contributions and interest charges thereon. There appear to be no exceptions.

The System's claim covers a number of counties and other political subdivisions, including school districts, which have established retirement programs administered by the System. The claim also covers county school superintendents' offices and a county hospital. We are not certain whether the claims against county school superintendents' offices are for delinquencies attributable to the school districts for which

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the superintendents act as fiscal agents^{1/} or are for delinquencies attributable only to the superintendent's offices as employers of covered personnel. If the former were the case, the System's claim would be against monies payable to school districts; if the latter were the case, the claim would be against monies payable to the entities establishing retirement programs for the superintendents' offices. The retirement program applicable to the county hospital likely was established by the county in which the hospital operates; therefore, the claim should be against that county.

When the System has ascertained the appropriate entities against which it wishes to make a claim and has presented such a claim to you, you then should determine whether the State treasury contains any money payable to a political subdivision against which the System has submitted a claim. If the State treasury contains such monies, you then should inform the System to present its claim to the Finance Division and to the appropriate department or agency of the State which is charged with responsibility for submitting to the Finance Division the documents required by the Finance Division to issue its warrant or warrants authorizing the State Treasurer to pay monies to the political subdivision against which the System has a claim. When the System has presented its claim to the Finance Division and the appropriate agency, a warrant will be issued by the Finance Division to the System in the amount of the System's claim to be paid from monies in the State treasury payable to the political subdivision.

Sincerely,


BOB CORBIN
Attorney General

BC/mm

^{1/} See A.R.S. § 11-514.