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December 17, 1980

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ARIZONA ATTORNEY GENERAL

Mr. Lowell Sutton, Administrator
Fund Manager
Public Safety Personnel Retirement System
Room 411, 3033 North Central Avenue
Phoenix, AZ 85012

Re: I80-211 (R80-211)

Dear Mr. Sutton:

We have considered your question about offsetting benefits received against the refund of contributions of a member of the Public Safety Personnel Retirement System ("System") who was placed on a temporary disability pension and received benefits from January 1, 1980, until July 1, 1980, when his Local Board terminated his disability benefits, and who shortly thereafter terminated his employment and applied for a refund of his accumulated contributions.^{1/}

Following its usual practice, the Fund Manager refunded to the claimant an amount that equalled the difference between his total accumulated contributions minus the total amount of benefits paid. The local board now has ordered the Fund Manager to refund the total amount of accumulated contributions, without deducting any of the amount of benefits paid.

1. A refund of contributions to a terminating member of the System is authorized in A.R.S. § 38-846.A, which provides:

Upon termination of employment for any reason other than death or retirement, a member shall receive a lump sum payment equal to his accumulated contribution as of the date of termination.

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Your request presents two issues. First, we must determine whether the System provides for an offset against a member's accumulated contributions refunded to him upon termination for disability benefits paid to the member prior to termination. If such an offset is allowed, we must address the question of the amount of the offset.

The statutes embodying the System are silent on your specific questions. Because of this legislative silence, we must examine the entire statutory scheme of the System against the backdrop of applicable rules of statutory construction. The principle rules of construction are that the Legislature's intent be ascertained and followed and that statutes shall be liberally construed to effect their objects and promote justice. State v. McEuen, 42 Ariz. 385, 26 P.2d 1005 (1933). When two constructions of a statute are possible, the preferred construction is that which will best carry out the apparent purpose of the Legislature and be in harmony with the general public policy of the State. Geitz v. Webster, 46 Ariz. 261, 60 P.2d 573 (1935). To arrive at the intention of the Legislature the courts look to the words, context, subject matter, effects and consequences, reason, and spirit of the law. Arnold Const. Co., Inc. v. Arizona Board of Regents, 109 Ariz. 495, 512 P.2d 1229 (1973).

Footnote 1. cont.

The term "accumulated contributions" is defined in A.R.S. § 38-842.2:

"Accumulated contributions" means, for each member, the sum of the following:

(a) The amount of his aggregate contributions made to the fund.

(b) The amount, if any, attributable to the employee's contributions prior to his effective date under another public retirement system, other than the federal social security act, and transferred to the fund.

(c) The interest credited on such amounts at a rate and in accordance with procedures adopted by the fund manager, which rate and procedures may be changed by the fund manager.

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Each employee of the System is obligated to contribute to the fund an amount equal to 8% of his compensation. A.R.S. § 38-843.C. Each employer participating in the System contributes an actuarially determined amount which represents the normal cost on a level cost basis plus the amount required to amortize unfunded liability. See A.R.S. § 38-843.B. Various State taxes also are allocated to the System to be used for the payment of benefits and expenses. See e.g., A.R.S. §§ 20-224 & 20-224.01. These contributions are invested by the Fund Manager, and the contributions and earnings thereon provide the fund from which benefits are paid to eligible members. If we conclude that a member, upon termination, is entitled to a refund of his accumulated contributions without an offset for disability benefits paid, we must construe the System law as saying that when disability benefits are paid to a member, the benefits are wholly attributable to the employer's contributions and taxes. On the other hand, if we conclude that the total benefit paid should be deducted from the refund, we must construe the System law as saying that disability benefits are wholly attributable to the employee's contributions.

In two specific situations the Legislature has chosen to dictate which contributions will be charged for benefits received.

A.R.S. § 38-846.I provides that if a member's accumulated contributions exceed the sum of all pension payments made to or on behalf of the member at the date of death of the member's last beneficiary, payment of a lump sum refund is made of the member's accumulated contributions minus the aggregate pension payments made to or on behalf of the member.

A.R.S. § 38-849.B specifies that, if a member is convicted of the crime of falsifying a record of the System with intent to defraud the System, the member is entitled to a lump sum payment equal to the member's contribution less benefits received.

In these two instances, the Legislature has determined that the member's contributions will be charged with the total amount of benefits paid. In the first instance the member and his beneficiaries, for whose benefit the System was established, have decreased after having been served fully by the System. No doubt the Legislature concluded that, in balancing the equities in such a situation, it would tip the balance in favor of reducing costs to employers while still assuring that an amount equal to all of the member's contributions would be paid out of the System. In the second

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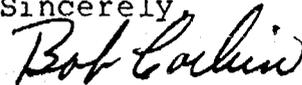
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instance, we consider the attribution of benefits solely to the member's contributions to be a form of retribution for the offense. In no other instance does the System law provide for attributing benefits paid solely to a member's contributions.

A.R.S. § 38-849.C provides for an offset of workmen's compensation payments from disability benefits paid to a member or his beneficiary under the System. The Legislature, in this instance, has limited the offset to the portion of the System disability benefit attributable to employer contributions. This is consistent with the contributory nature of the System and case law of other jurisdictions. In City of Los Angeles v. Industrial Accident Commission, 46 Cal.Rptr. 97, 404 P.2d 801 (Cal.Sup.Ct. 1965), the Court considered a workmen's compensation offset provision in the City's Charter which, unlike A.R.S. §§ 38-849.C, was silent on how to determine the amount of the offset. The City contended that the workmen's compensation payments should be offset against the entire disability benefit payable under the pension system. Relying on the contributory nature of the City's pension system, the Court decided that the City equitably was entitled to apply the offset only to the portion of the disability benefit attributable to the City's contributions inasmuch as the employee too had contributed to his own disability benefit payments.

From the statutory scheme and nature of the System, we infer that if the Legislature had intended disability benefits previously paid to a terminating member to be attributable only to the member's contributions, on the one hand, or attributable only to the employer's contributions, on the other hand, the Legislature would have provided for the attribution specifically as it did in A.R.S. §§ 38-846.I and 38-849.B. We think, in this instance, in the absence of specific legislation and because the member and the employer both have contributed to the disability benefits, the System scheme and equity dictate that the benefits paid be apportioned among the sources of contribution to the benefits. When that apportionment is made, the member's pro rata share of the disability benefits paid to the member then should be offset against the member's accumulated contributions so that the refund to the terminating member will be an amount equal to his contributions minus his pro rata share of disability benefits received. We think any other result would be inequitable and inconsistent with the contributory nature of the System.

Sincerely,



BOB CORBIN
Attorney General