

Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

September 19, 1990

The Honorable Richard Pacheco
State Representative
Capitol Complex, House Wing
Phoenix, Arizona 85007

Re: I90-081 (R90-032)

Dear Representative Pacheco:

You asked whether the Legislature may provide an expiration date for a "retirement window" allowed members of the State Retirement System in Laws 1989 (1st Reg. Sess.) Ch. 310, §§ 20, 26, and 27 (Chapter 310). You question whether the expiration date violates article II, section 25 of the Arizona Constitution, which prohibits impairment of contracts without just compensation, citing Yeazell v. Copins, 98 Ariz. 109, 402 P.2d 541 (1965). We conclude that because Chapter 310 created vested rights only for members of the System who were employed by a qualified employer on May 14, 1989 and who elected to retire on or before November 14, 1989, that the expiration date did not violate article II, section 25 of the Arizona Constitution.

Laws 1989 (1st Reg. Sess.) Ch. 310, § 20, 26 and 27 provided a special formula for calculating normal retirement benefits of certain members of the Retirement System who were actively employed on May 14, 1989 and who elected to retire from May 15, 1989 through November 14, 1989. The special formula was scheduled for repeal on November 14, 1989. Id., at § 26.^{1/}

^{1/} Sec. 20 (A) Normal retirement benefit; applicability

A. Notwithstanding section 38-781.07, Arizona Revised

(Footnote continued on page 2)

Article II, section 25 of the Arizona Constitution provides that "[n]o . . . law impairing the obligation of a contract, shall ever be enacted." In Yeazell v. Copins the Arizona Supreme Court held that a public employee had a vested contractual right, under article II, section 25, to receive pension benefits in accordance with legislation existing at the time employment commenced, and that pension benefits, being deferred compensation, could not be impaired by retroactively applied legislation. You asked whether the expiration date set for the "retirement window" provision of Chapter 310 violates the court's holding in Yeazell.

The constitutional prohibition against impairment of contracts applies only to "vested" rights, i.e., rights which become effective upon fulfillment of specified qualifying conditions. See Hall v. A.N.R. Freight System, Inc., 149 Ariz. 130, 139, 717 P.2d 434, 443 (1986). Contractual rights are

(Footnote 1/ continued

Statutes, a retirement plan participant who meets the requirements for pension at normal retirement is entitled to receive a life annuity which equals the sum of paragraphs 1 and 2, multiplied by paragraph 3 plus paragraph 4 when the paragraph are defined as follows:

1. The number of whole and fractional years of credited past service times 2.2 per cent.
2. The number of whole and fractional years of credited future service times 2.2 per cent.
3. The participant's average monthly compensation.
4. Any prior service benefits to which the participant was entitled under the system.

Sec. 26 Delayed Repeal

B. Section 20 of this act is repealed from and after November 14, 1989.

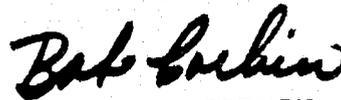
Sec. 27 Retroactivity and applicability

A. Section 20 of this act applies retroactively to May 15, 1989 and applies only to those participants who were employed by a plan employer on May 14, 1989.

vested "'when the right to enjoyment, present or prospective, has become the property of some particular person . . . as a present interest.'" Fund Manager, Public Safety Personnel Retirement System v. City of Phoenix Police Department Public Safety Personnel Retirement System Board, 151 Ariz. 487, 489, 728 P.2d 1237, 1239 (App. 1986), quoting Steinfeld v. Nielsen, 15 Ariz. 424, 465, 139 P. 879, 896 (1913). In Fund Manager, the Arizona Court of Appeals held that the rule of Yeazell v. Copins applied only to vested rights and that a public employee's right to an accidental disability pension did not vest until the contingent event of injury occurred. 151 Ariz. at 490, 728 P.2d at 1241. See Abbott v. City of Tempe, 129 Ariz. 273, 279, 630 P.2d 569, 575 (App. 1981) (holding that a municipality could decrease the rate of holiday pay and accrual of vacation credits for city employees because the employees' rights had not vested by performing the services entitling them to the benefits.)

Our opinion is that Chapter 310 created vested rights only for members of the State Retirement System who were employed by a qualified employer of the System on May 14, 1989 and who elected to retire on or before November 14, 1989. Because no other vested right was created by the "retirement window" provision, the expiration date of the benefits caused no impairment of contract.^{2/}

Sincerely,



ROBERT K. CORBIN
Attorney General

BC:BEE:FWS:LPF:lpf

^{2/}We also note that Art. 2 § 25 of the Arizona Constitution is applied consistently with art. 1, § 10 of the United States Constitution, which also prohibits laws impairing contracts. See Fund Manager, 151 Ariz. at 490, 728 P.2d at 1241.