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FILE NO. S-509

PENSIONS:

**State Employees Retirement System
Eligibility For Increased Benefits**

Mr. Norman E. Lentz
Secretary
State Employees' Retirement System of Illinois
1201 South Fifth Street
Springfield, Illinois 62706

Dear Mr. Lentz:

I have your letter concerning the above subject
which reads as follows:

"Senate Bill 905, signed by the Governor on July 15, 1971, amended Article 14 of the Illinois Pension Code (Chapter 108 1/2) relating to the State Employees' Retirement System. Among the changes made by this bill were increases in maximum Survivors Annuity benefits (Sec. 14-159); the age for a spouse to qualify for benefits was reduced (Secs. 14-157 and 14-159); a minimum death benefit

of \$500 was provided for any member who dies after retirement and is not survived by a dependent eligible to benefits (Sec. 14-155); and the Accidental Disability benefit was increased from 60% to 75% of salary (Sec. 14-161).

On September 1, 1971 the Governor signed Senate Bill 471 which, among other things, added Section 1-103.1 to Article 1 of the Pension Code with respect to 'Application of Amendments' to the Code.

In view of these changes, I have been instructed by the Board of Trustees to obtain your opinion on the following questions:

1. Are dependents of deceased members, who died or terminated service prior to July 15, 1971, now receiving the maximum Survivors Annuity as previously provided, eligible for an increase subject to the new maximums as of July 15, 1971?
2. Is the spouse of a deceased member whose monthly Widow's Annuity or Survivor's Annuity benefit had been deferred because of not having attained age 55 eligible to monthly payments as of July 15, 1971 if age 50 or over at that date?
3. Is the minimum death benefit of \$500 payable in the event of death of a retired member who is not survived by a dependent to be considered in each case where death occurs on or after July 15, 1971 even though termination of service occurred prior to that date?
4. Does the increase in the amount of Accidental Disability apply to those members who were in receipt of this benefit on July 15, 1971?"

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As indicated in your letter, Senate Bill 905 was approved by the Governor on July 15, 1971. Inasmuch as it was passed by the General Assembly before June 30, 1971 it became effective on the date of approval. Senate Bill 905 amended numerous sections of the State Employees' Retirement System Article of the Illinois Pension Code and as indicated in your letter it provided for an increase in benefits to many persons, including dependents of deceased members, widows of deceased members and members who were in receipt of accidental disability benefits.

Your letter asks whether language in Senate Bill 471 passed by the Seventy-seventh General Assembly on June 30, 1971 and approved by the Governor on September 1, 1971 modifies or amends Senate Bill 905 supra so as to void the increase in benefits that Act granted to the dependents, widows and members who were receiving benefits on July 15, 1971.

Section 1 of Senate Bill 471 reads in pertinent part as follows:

* * * * *

Amendments to this Code which have been or may be enacted shall be applicable only to persons who, on or after the effective date thereof, are in service as an employee under the retirement system or pension fund covered by the Article which is amended, unless the amendatory Act specifies otherwise.

* * * * *

Although Section 3 of the Bill states, "This Act shall become effective on July 1, 1971.", it did not become effective until September 1, 1971. That statutory provision requires this construction even though the language of Senate Bill 471 specifies an effective date two months prior to the date it became a law.

There is no doubt that under Senate Bill 471 amendments to the Pension Code apply only to persons in service "as an employee" after September 1, 1971. The General Assembly may, for instance, in its next session, amend the Code by providing for certain benefits to persons who are in the employment of the State and under the Retirement System. In such a case, the benefits provided would be available only to persons who are, on or after the effective date of the enactment, in the employment

of the State and under the Retirement System, unless such enactment specified otherwise.

For the several reasons set out hereinafter, it is my opinion that Senate Bill 471 does not diminish or impair the rights provided by Senate Bill 905.

Both Bills discussed herein relate to separate aspects of the Pension Code. That Code is made up of one Article on "General Provisions" and twenty-two other "Articles". Seventeen of these "Articles" create separate and distinct pension systems. Each of the "Articles" originally were created by a separate Bill.

Senate Bill 905 relates solely to Article 14, the State Employees Retirement System, and covers retirement or disability annuitants, or their spouses or dependents, where the employee had left the service prior to July 15, 1971. Senate Bill 471 relates to Articles 9 and 10, the County Employment and Forest Preserve District Employees Retirement Systems, and relates solely to those "in service as an employee" when the amendment might become effective.

In other words, Senate Bill 905 refers to rights vested under previous Acts where the employee involved had retired, become disabled, or died prior to July 15, 1971. Senate Bill 471, on the contrary, refers to inchoate, possible future changes in rights or benefits which may result from amendments to specific Articles while those covered thereunder are still "in service as an employee."

A reading of Senate Bill 471 shows it does not purport to affect vested rights of those already receiving benefits where the covered employee has retired for age, become disabled or has died. The various paragraphs of Senate Bill 471 refer to "an employee" under different circumstances, and in Section 9-170 to "present employees, future entrants, and re-entrants".

The vested rights and benefits which became effective July 15, 1971 under Senate Bill 905 are protected by specific language in our Constitution. Article XIII, Section 5 of the 1970 Constitution of the State of Illinois reads as follows:

"Membership in any pension or retirement system of the State, any unit of local government

or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired."

The vested rights created by Senate Bill 905 are not only protected by the Constitution but by the statutes as well. As noted above Senate Bill 471 contains no reference to the provisions of Senate Bill 905 and has no language which purports to relate to or repeal or modify the earlier statute even by implication. Your attention is called to Illinois Revised Statutes 1971, ch. 131, par. 4, which reads in part as follows:

"No new law shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to * * * any right accrued, or claim arising under the former law, * * * This section shall extend to all repeals, either by express words or by implication, whether the repeal is in the act making any new provision upon the same subject or in any other act."

Since the statute quoted is found in that portion of the statutory law of this State treating specifically the construction of statutes and the effect of repeal and amendment thereto, such provision deserves great weight.

Our Supreme Court in Klemme vs. Drainage District No. 5,
380 Ill. 221 at page 223 said,

"repeals by implication are not favored,
and it is only where two statutes are
clearly repugnant to each other that the
later one operates as a repeal of the
former."

The primary object of statutory construction is
to determine the intention of the General Assembly. The
Constitution of 1870, under which both Bills were passed,
required in Article IV, Section 13, that any "section
amended, shall be inserted at length in the new act." The
1970 Constitution in Article IV, Section 8(d) states "A
bill expressly amending a law shall set forth completely
the sections amended." Since no reference whatever was
made in Senate Bill 471 to any Section of Article 14 of
The Pension Code, it is clear the General Assembly had
no intention of expressly amending any part of Senate
Bill 905 which previously amended Article 14.

The General Assembly made no attempt in passing
Senate Bill 471 to amend any provision of the original
Article 14 or the intermediate Act, Senate Bill 905, which
had expressly amended certain Sections of Article 14. Our

Supreme Court in People ex rel. Brenza vs. Fleetwood,

413 Ill. 530 at page 547 said:

"Amendments are to be construed together with the original act to which they relate as constituting one law, and are also to be considered together with other statutes upon the same subject as a part of a coherent system of legislation. (S. Buchsbaum & Co. v. Gordon, 389 Ill. 493; Klemme v. Drainage District No. 5, 380 Ill. 221.) In the absence of legislative intent to the contrary, and where the two acts are not so inconsistent that both cannot stand and be given effect, a later law which is merely a re-enactment of a former law does not repeal an intermediate act which has qualified or limited the first one, but the intermediate act will be deemed to remain in force and to qualify or modify the new act in the same manner as it did the first. S. Buchsbaum & Co. v. Gordon, 389 Ill. 493."

As noted above, Senate Bill 905 relates to vested rights of dependents or retired or disabled employees who had already left the service, while Senate Bill 471 relates to possible changes in inchoate rights of those still "in service as an employee". These separate statutes were not "so inconsistent that both cannot stand". Accordingly even had Senate Bill 471 purported to amend Article 14, the intermediate Act (Senate Bill 905) will be deemed to remain in force.

As quoted hereinabove, Section 1 of Senate Bill 471 is "applicable only to persons who, on or after the effective date thereof, are in service as an employee under the retirement system, or pension fund covered by the Article which is amended . . ." (Emphasis added).

It is difficult to see how the General Assembly could have used words more specific than those underlined in showing its intention that Senate Bill 471 was to apply "only" to those "employees in service" on or after the effective date of the amendment of the amended Article. Since there was no amendment to Article 14, Section 1 of Senate Bill 471 would seem to have no possible application to those benefited by Senate Bill 905, since their rights accrued under Article 14.

In reaching the above conclusion it is not necessary to find that Senate Bill 471 is invalid. There is no reason why both Acts may not stand since the effective date of Senate Bill 471, as determined above, eliminates any problem with respect to giving force to both Bills. In all cases two Acts, such as these before us, should be

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construed together if possible so that both might stand.
People v. Shader, 326 Ill. 145 and cases cited hereinabove.

To hold other than in the manner set out above would seem to lead to a serious constitutional problem. In addition to the above comment concerning Section 5 of Article XIII, your attention is called to Bardens vs. Judges Retirement System, 22 Ill. 2d 56 wherein our Supreme Court held that the plaintiff had a vested right to certain benefits under the Judges Retirement System and that a statutory amendment that diminished or impaired those rights violated his contractual rights provided in Section 14, Article II of the 1870 Constitution of the State of Illinois. The language of Article II, Section 14 of the 1870 Constitution was incorporated verbatim in the 1970 Constitution at Section 16, Article I.

It seems clear the holding in Bardens, supra would bar the application of Senate Bill 471 to defeat the purpose of Senate Bill 905 and diminish the benefits provided in Senate Bill 905 to the beneficiaries concerned with in your letter.

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For the above reasons it is my opinion that the benefits provided in Senate Bill 905 and referred to in your question 1 through 4 are not impaired by Senate Bill 471. Each of your questions should, therefore, be answered in the affirmative.

Very truly yours,

A T T O R N E Y G E N E R A L