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FILE NO. S-1096

PENSIONS:
State Employees' Retirement System
Withholding from Benefits.

Michael L. Mory
Secretary
State Employees' Retirement
System of Illinois
1201 South Fifth Street
Springfield, Illinois 62706

Dear Mr. Mory:

I have your letter in which you ask whether the State Employees' Retirement System may make deductions for Illinois State Employees' Association dues from the benefits of Illinois State Employees' Association members who are recipients of benefits from the System. The deduction would be made on authorization from the member. You refer to an apparent conflict between section 14-197 of the Illinois Pension Code (Ill. Rev. Stat. 1975, ch.

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108 1/2, par. 14-197) and section 4 of the State Salary and Annuity Withholding Act (Ill. Rev. Stat. 1975, ch. 127, par. 354) as to whether such dues can be withheld from benefits.

Section 14-197 provides:

"All annuities and other benefits payable under this Article and all accumulated credits of employees in this system shall be unassignable and shall not be subject to execution, garnishment or attachment, except that a person receiving a service retirement allowance or ordinary or accidental disability benefits may authorize withholding from such benefits for the payment of premiums on any type of group insurance authorized to be issued by the laws of this State, if a majority of the membership of the group for which such insurance is issued is composed of State employees or retired State employees, or both. Such withholding shall be in accordance with the provisions of the 'State Salary Withholding Act', approved August 21, 1961, as heretofore and hereafter amended."

Section 4 of the State Salary and Annuity Withholding Act provides in pertinent part:

"An employee or annuitant may authorize the withholding of a portion of his salary, wages, or annuity for any one or more of the following purposes:

* * *

(4) for payment of dues to any association the membership of which consists of State employees; and former State Employees;

* * *

The terms "annuitant" and "annuity" as used in section 4 are defined in section 2 of the State Salary and Annuity Withholding Act (Ill. Rev. Stat. 1975, ch. 127, par. 352) as

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follows:

"

* * *

'Annuitant' means a person receiving a service retirement allowance or ordinary or accidental disability benefits under Article 2, Article 14 or Article 18 of the 'Illinois Pension Code', approved March 18, 1963, as heretofore and hereafter amended;

'Annuity' means the service retirement allowance or accidental disability benefits received by an annuitant."

Each Act contains a reference to the other; hence, the legislature was obviously aware either when it enacted or amended each of the Acts of the existence of the other Act. Nevertheless, a conflict clearly exists between section 14-197 and section 4. Section 14-197 states that annuities are unassignable except that the recipient may authorize withholding from the benefits for premiums on authorized group insurance. Section 4, to the contrary, clearly permits annuitants to authorize withholding from benefits for payment of dues to any association, the membership of which consists of "state employees and former state employees". The answer to your question, as you perceived in your letter, depends on which statute controls.

Statutes which appear to be in conflict are not to be construed as inconsistent if it is possible to construe them otherwise. (People v. Peoria & Eastern Ry. Co., 383 Ill.

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79.) Where there is irreconcilable conflict, however, and where there are two statutes, one of which is general and designed to apply to cases generally and the other of which is particular and relates only to one subject, the particular provision must prevail and must be treated as an exception to the general provision. (Bowes v. City of Chicago, 3 Ill. 2d 175; in re Estate of Gubala, 81 Ill. App. 2d 378.) In this case section 14-197 is a general prohibition against assignment of annuities payable under article XIV of the Pension Code with one specific exception. Section 4 is a particular provision authorizing withholding from such annuity benefits for certain specific purposes, including payment of dues to an association whose membership consists of State employees and former State employees.

The rule that the specific prevails over the general has been held to be especially applicable where the specific statute is enacted later in time than the general statute. (Bowes v. City of Chicago, 3 Ill. 2d 175.) In the present situation the prohibition against assignment, execution, garnishment or attachment of annuities now contained in section 14-197 of the Pension Code was originally enacted in 1943. (Laws of 1943, vol. 2, p. 366.) This statute was enacted as section 14-197 of the Pension Code in 1963

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(Laws of 1963, p. 577-78), and was then amended in 1963 to include the exception for withholding of group insurance premiums. (Laws of 1963, p. 2370.) Section 4 of the State Salary and Annuity Withholding Act was originally enacted in 1961 (Laws of 1961, p. 3782), but was not amended to add item (4), which authorizes withholding for payment of dues to qualified employees' associations, until 1965. (Laws of 1965, p. 2572.) Clearly, item (4) of section 4 was enacted subsequent to the enactment of section 14-197. Therefore, as the specific and later enacted statute, item (4) of section 4 is engrafted onto section 14-197 as an additional exception to the prohibition against assignment of annuities.

It is therefore my opinion that section 4 (4) of the State Salary and Annuity Withholding Act is the controlling statute and that when authorized by the annuitant the State Employees' Retirement System may make deductions for Illinois State Employees' Association dues from the benefits of Illinois State Employees' Association members.

Very truly yours,

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