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January 8, 1974

FILE NO. S-676

**SCHOOLS AND SCHOOL BOARDS:
Payment of Employee Contribution
to Illinois Teachers' Retirement System
by School System.**

Honorable Charles R. Vaughan
State's Attorney of Richland County
Courthouse
Olney, Illinois 62450

Dear Mr. Vaughan:

I have your letter in which you state:

"The Superintendent of Educational Service, Bernard E. Eagleton, Richland County, Illinois, has requested an opinion concerning the following provisions of Section 16.152 of Chapter 108 1/2, Illinois Revised Statutes, Smith-Hurd Edition. Section 16.152 relates to the contribution to be made to the Pension System by members of the teaching profession. Mr. Eagleton requests an opinion as to whether the Board of Education in a Unit District could lawfully pay as a fringe benefit, a portion or all, of the employees contribution called for by said section to the Teachers Retirement System. (Emphasis added.)

The section of the Illinois Pension Code to which you refer provides:

"§16-152. Contributions by members. Each member shall make contributions to this system as follows:

(1) For service prior to attainment of age 70, and prior to July 1, 1972, normal contributions for creditable service prior to July 1, 1947 at the rate of 4%; and for creditable service after June 30, 1947, and until June 30, 1953 at the rate of 5%; and for creditable service after June 30, 1953, and until July 1, 1971 at the rate of 6%; and for creditable service after June 30, 1971 at the rate of 6 1/2% of each payment of salary as defined in Section 16-121, paid to him by any school district in this system or from state funds for service as a teacher; provided such contribution based on a full school year for any year prior to July 1, 1947 is not less than \$30 nor more than \$100; for any year after June 30, 1947 and prior to July 1, 1949 is not more than \$175; for any year after June 30, 1949 and prior to July 1, 1953 is not more than \$240; for any year after June 30, 1953 and prior to July 1, 1955, is not more than \$360; for any year after June 30, 1955 and prior to July 1, 1957 is not less than \$144 nor more than \$360; for any year after June 30, 1957 and prior to July 1, 1961 is not less than \$144 nor more than \$480; and for any year of full-time teaching after June 30, 1961 and prior to July 1, 1971 is not less than \$144; and after June 30, 1971 is not less than \$156; such minimum contribution not being applicable wherein the member is concurrently contributing under both Articles 15 and 16 of the 'Illinois Pension Code'. If prior to July 1, 1972 a member continues in service as a teacher until the end of the school year in which he attains age 70, his contributions shall also continue only to the close of such school year;

(2) Additional contributions of such amounts as may be required under the provisions of Sections 16-127 and 16-128;

(3) Contributions of such amounts as are required for survivors' benefits; and

(4) Contributions of such amounts as are required for the annual increase in base pension provided in Section 16-133.1 of this Article;

(5) Effective for service after June 30, 1972 regular contributions under this Section shall be required regardless of age.

Amended by P.A. 77-2114, §1, eff. Oct. 1, 1972."

Ill. Rev. Stat. 1972 Supp.,
ch. 108 1/2, par. 16-152.

It must first be pointed out that Article 16 of the Illinois Pension Code contemplates that the Teachers' Retirement System of the State of Illinois shall be a "contributory" plan, one in which both the employer and the employee make contributions to fund the obligations of the system. This is clearly shown by the provisions of the Illinois Pension Code set forth below:

"§16-154. Deductions from salary. The governing body of each school district and of each State institution coming under this retirement system, and the State Comptroller or other state officer certifying payroll vouchers, including payments of salary or wages to teachers, shall retain on every pay day the normal survivors' benefit, and additional contributions required of each teacher member. Each governing body or officer shall furnish a statement to each member showing the

amount deducted from his salary.

Normal and survivors' benefit contributions shall not be required of any age retirement beneficiary who is given temporary employment by a school board not exceeding that permitted by Section 16-118.

Ill. Rev. Stat. 1971,
ch. 108 1/2, par. 16-154.
as amended by P.A. 78-592.

"§16-157. Consent to deductions - discharge of claims. Every member is deemed to have consented to the deductions provided herein and shall receipt, when requested, for his full salary or compensation. Payment of salary or compensation less the deduction shall be a complete discharge and admittance of all salary and compensation claims and demands for the member's services rendered during the period covered by such payment."

Ill. Rev. Stat. 1971,
ch. 108 1/2, par. 16-157.

"§16-151. Refund. A member who ceases to be a teacher for any cause other than death or retirement, upon demand made not previous to 4 months after ceasing to teach, shall be paid (1) from the Members' Contribution Reserve the amount deducted from his salary or paid by him with respect to membership service which has not previously been refunded and which are then credited to his individual account in the Members' Contribution Reserve, without interest thereon, and

(2) from the Employer's Contribution Reserve the amounts deducted from his salary or paid by him with respect to prior service, which have not previously been refunded or forfeited because of a refund, under either this system or 'An Act in relation to an Illinois State Teachers' Pension and Retirement Fund', approved May 27, 1915, as amended without interest thereon, and

(3) from the Reserve for annual increase in base pension, any amount credited thereto as the result of contributions withheld from his salary or otherwise paid by him as provided in Section 16 - 133.1 of this Article.

Any such amounts may be paid either in one sum or at the election of the board, in 4 quarterly payments.

Upon acceptance of a refund, all accrued rights and credits in the System are forfeited and may be reinstated only if the refund is repaid together with interest thereon from the date of the refund to the date of repayment. Repayment shall be permitted upon return to teaching; however, service credit previously forfeited by a refund and subsequently re-instated may not be used as a basis for the payment of benefits, other than a refund of contributions, prior to the completion of one year of teaching credit following the refund, except when repayment is permitted under the provisions of the 'Retirement Systems Reciprocal Act.'

Ill. Rev. Stat. 1971,
ch. 103 1/2, par. 16-151.

The last quoted statutory provision is particularly important as it establishes that member's contributions to the system are fully vested in them as they are withdrawable upon resignation of the member. Thus, if a member of the System terminates his employment, the contributions made by him or on his behalf are his upon request.

The powers of school boards to appoint teachers and

determine their compensation are set forth in article 10 of The school Code as follows:

"§10-20.7. Appoint teachers and fix salaries. To appoint all teachers and fix the amount of their salaries, subject to limitations set forth in this Act. In fixing salaries of certificated employees school boards shall make no discrimination on account of sex, and there shall be no loss in salary because of jury duty, except that the board may make a deduction equal to the amount received for such jury duty. Certified employees may be paid full salary by the board when in the active service of this State, under orders of the Commander-in-Chief, as members of the Illinois National Guard or Illinois Naval Militia, provided that the board may deduct from such salary any amounts received for such State service. A school board may at any time after January 1 employ teachers for the school year beginning on the following July 1. Amended by P.A. 77-1816, §1, eff. Oct. 1, 1972."
Ill. Rev. Stat. Supp. 1972,
ch. 122, par. 10-20.7.

"§10-21.1. Employment of teachers. To examine teachers by examinations supplemental to any other examinations and to employ teachers and fix the amount of their salaries subject to limitations set forth in this Act. Provided, that in fixing salaries of certificated employees school boards shall make no discrimination on account of sex; provided further, that sabbatical leaves, with full or partial salary, may be granted in accordance with the rules of the board.

Ill. Rev. Stat. 1971,
ch. 122, par. 10-21.1.

In addition to the general power to appoint teachers and fix their salaries subject to certain limitations as to minimum salary levels, school boards have certain limited power to provide fringe benefits for their employees:

"§10-22.3a. To provide for or to participate in provisions for insurance protection and benefits for its employees and their dependents including but not limited to retirement annuities, medical, surgical and hospitalization benefits in such types and amounts, if any, as shall be determined by the board, for the purpose of aiding in securing and retaining the services of competent employees. Where employee participation in such provisions is involved, the board, with the consent of the employee, may withhold deductions from the employee's salary necessary to defray the employee's share of such insurance costs. Such insurance or benefits may be contracted for only with an insurance company authorized to do business in this state, or any non-profit hospital service corporation organized under the non-profit Hospital Service Plan Act or incorporated under the Medical Service Plan Act. Such insurance may include provisions for employees and their dependents who rely on treatment by prayer or spiritual means alone for healing, in accordance with the tenets and practice of a recognized religious denomination.

For purposes of this Section, the term 'dependent' means an employee's spouse and any unmarried child (1) under the age of 19 years including (a) an adopted child and (b) a step-child or recognized child who lives with the employee in a

regular parent-child relationship, or (2) under the age of 21 who is enrolled as a full-time student in any accredited school, college or university.

Ill. Rev. Stat. 1971,
ch. 122, par. 10-22.3a.

While this section of The School Code does not apply specifically to the case of contributions to the Teachers' Retirement System, it does indicate the intention of the General Assembly to confer upon local school boards the maximum leeway in determining what are appropriate fringe benefits for their employees and the manner in which such benefits are to be paid for. It is also of interest that, when a teacher is granted a sabbatical leave, the school board is directed to pay his contribution to the Teachers' Retirement System at his full salary rate. Ill. Rev. Stat. 1971, ch. 122, par. 24-6.1.

From the foregoing, it is my opinion that the powers of a school board with respect to setting salaries for its employees and providing fringe benefits are sufficiently broad to permit a school board to make member contributions to the Teachers' Retirement System of Illinois on behalf of

its employees.

A question not specifically raised by you, but of importance in this matter, is the effect of such payment on the amount of contributions to be paid to the Teachers' Retirement System. The Illinois Pension Code defines "salary" for the purposes of determining member contributions to the System as the "actual compensation received by the teacher during any school year". As pointed out above, these member contributions are withdrawable by the member upon his resignation. Under a contributory plan such as the Teachers' Retirement System of the State of Illinois, contributions are based upon the member's entire compensation, including pension contributions. Accordingly, I am further of the opinion that, for purposes of determining the amount payable to the Teachers' Retirement System, contributions made on the member's behalf are to be treated as salary.

So that there is no confusion as to the treatment of such contribution as salary, I give an example: If a school board were to contract with a teacher by the terms of which contract the teacher is to be paid \$10,000 over

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and above his contribution to the Teachers' Retirement System, that teacher's gross salary would be \$10,869.57, not \$10,800; this is based upon contribution at the rate of 8%. I also assume that the higher amount would also be used in computing deductions for Federal and State income tax purposes as well as in determining whether the teacher is being paid in accordance with any applicable minimum salary laws. There may be a variety of other circumstances under which such treatment of the contribution as salary would be, and should be, closely examined.

Very truly yours,

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