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FILE NO. 85-016

PENSIONS:
Transfer of Creditable Service

Honorable Donald P. O'Connell
Acting Presiding Judge
First Municipal District
Circuit Court of Cook County
Richard J. Daley Center
Chicago, Illinois 60602

Dear Judge O'Connell:

I have your letter wherein you inquire regarding the transfer of creditable service from the County Employees' Annuity and Benefit Fund of Cook County [County Employees' Fund] to the Judges Retirement System of Illinois pursuant to subsection 18-112(g) of the Illinois Pension Code, added by Public Act 83-562, effective January 1, 1984, renumbered by Public Act 83-1440, effective January 1, 1985 (Ill. Rev. Stat.

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1984 Supp., ch. 108 1/2, par. 18-112(g)). Specifically, you ask the following questions:

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* * *

1) By virtue of the enactment of Public Act 83-562 during my first term as Circuit Judge and my completion of six years of service on December 3, 1984, do I have a vested right to transfer to the Judicial Retirement System of Illinois the credits accrued in the County Employees Annuity and Benefit Fund of Cook County?

2) If subparagraph [18-112(g)] added by Public Act 83-562 is repealed prior to the exercise of my rights thereunder, do I have a continuing right to transfer credits accrued as Administrative Director of the Circuit Court of Cook County so long as I am a member of the Judges Retirement System and so long as I am able to reestablish my credits in the County Employees Annuity and Benefit Fund?"

For the reasons hereinafter stated, it is my opinion that your right to receive service credit in the Judges Retirement System for service previously credited to the County Employees' Fund is not vested at this time, but rather is contingent upon the reestablishment of such credit and its transfer to the Judges Retirement System. Secondly, if subsection 18-112(g) of the Illinois Pension Code were repealed prior to your election to reestablish and transfer service credit, it is my opinion that you would have no continuing right to transfer such credit thereunder.

Section 18-112 of the Illinois Pension Code defines the term "service", for purposes of the administration of the Judges Retirement System of Illinois, as follows:

"Service. 'Service': The period beginning on the day a person first became a judge, whether prior or subsequent to the effective date, and ending on the date under consideration, excluding all intervening periods during which he or she was not a judge following resignation or expiration of any term of election or appointment.

Service also includes the following: * * *

(g) Any period that a participant served as the Administrative Director of the Circuit Court of Cook County, subject to the following conditions: (1) the maximum amount of such service which may be credited is 6 years; (2) in order to qualify for such credit in this system, a judge must have at least 6 years of service as a judge and participant of this system; (3) the last 6 years of service credited in this system shall be as a judge and a participant in this system; (4) credit accrued to the participant under any other public pension fund or public retirement system in the State by reason of the participant's service as the Administrative Director of the Circuit Court of Cook County shall be transferred to this system; and (5) the participant has contributed to this system the amount, if any, by which the amount transferred pursuant to subdivision (4) of this paragraph is less than the amount which the participant would have contributed to the system during the period of time being counted as service under this paragraph had the participant been a judge participating in this system during that time, based on the rate of contribution in effect and the salary earned by the participant on the date he or she became a participant, with interest accruing on such deficiency at a rate of 5% per annum from the date he or she became a participant through the date on which such deficiency is paid.

* * *

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(Emphasis added.)

From the context of your letter and the documents attached thereto, it appears that you previously have received a refund

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of your contributions to the County Employees' Fund. (See Ill. Rev. Stat. 1983, ch. 108 1/2, par. 9-164.) Therefore, such contributions must be repaid before service once credited to you in that Fund may be reestablished.

In order for a right to a pension benefit to "vest" in the functional sense of that term, the specified qualifying conditions must be fulfilled. (See Kraus v. Board of Trustees (1979), 72 Ill. App. 3d 833, 836.) Under the plain language of subsection 18-112(g) of the Illinois Pension Code, the right to receive credit for prior service as the Administrative Director of the Circuit Court of Cook County is conditioned upon the transfer of pension credit from the County Employees' Fund to the Judges Retirement System, and the payment of any additional sums necessary to equalize the level of contribution, as well as meeting the specific requirements governing the length of service in the Judges Retirement System. Thus, there can be no "vested right" to receive prior service credit under subsection 18-112(g) unless all of the qualifying conditions are fulfilled. There is, at most, an expectation based upon the anticipated continuance of the existing law. See Orlicki v. McCarthy (1954), 4 Ill. 2d 342, 347.

Moreover, article XIII, section 5 of the Illinois Constitution of 1970 (Ill. Const. 1970, art. XIII, § 5), which prohibits the diminishment or impairment of the contractual

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right to benefits accruing under governmental pension systems, does not create a vested right to receive prior service credit under subsection 18-112(g) of the Illinois Pension Code. That constitutional provision protects and insures the pension rights of employees which have been earned (Peters v. City of Springfield (1974), 57 Ill. 2d 142, 152; 1976 Ill. Att'y Gen. Op. 289, 291), and thus prohibits legislative action which directly diminishes the benefits to be received by those who became members of a pension system prior to the enactment of such legislation. (Kraus v. Board of Trustees (1979), 72 Ill. App. 3d 833, 849.) The Constitution does not, however, guarantee a right to take advantage of beneficial pension changes without providing consideration for that contractual modification, if required. Kuhlmann v. Board of Trustees (1982), 106 Ill. App. 3d 603, 608.

Therefore, it is my opinion that until you reestablish your credit in the County Employees' Fund and provide for its transfer, you do not have a vested right to receive credit in the Judges Retirement System of Illinois for prior service as the Administrator of the Circuit Court of Cook County under subsection 18-112(g) of the Illinois Pension Code. Your right to receive credit for such service, however, will become vested upon the fulfillment of all of the statutory conditions specified therein.

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In response to your second question, it is the general rule that where a statute is repealed and nothing is substituted for it, the statute is repealed as if it had never existed, and it bears no more force and effect than had it never been enacted. (City of Chicago v. Degitis (1943), 383 Ill. 171, 175.) As I have concluded above, until all of the statutory conditions set out in subsection 18-112(g) of the Illinois Pension Code are fulfilled, you have no vested right to receive prior service credit as provided therein. Consequently, it is my opinion that were subsection 18-112(g) of the Illinois Pension Code to be repealed prior to the fulfillment of those conditions, you would have no continuing right to transfer and receive the service credit in accordance with its provisions. (See 1976 Ill. Att'y Gen. Op. 289.) If, however, all conditions, including the transfer of credit, were fulfilled prior to the repeal of subsection 18-112(g) of the Illinois Pension Code, your right to receive such credit would become vested, and those benefits accruing could not thereafter be constitutionally diminished or impaired.

Very truly yours,


ATTORNEY GENERAL