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Opinion Committee

State of Texas
House of Representatives

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COMMITTEES:
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March 17, 1998

RD-1115

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MAR 20 1998

The Honorable Dan Morales
Attorney General, State of Texas
P.O. Box 12017, Capitol Station
Austin, Texas 78711-2017

FILE # ML-40163-98
GOVERNMENTAL INQUIRY UNIT
I.D. # 40163

Dear General Morales:

I am requesting a review and ruling from your office regarding the amendment to subchapter B, Chapter 814, Government Code, Section 814.1041, enacted in the last legislative session. This section provides for "Temporary Service Retirement Option for Members affected by Privatization of Other Reduction in Workforce." I am concerned that the Employee Retirement System (ERS) has incorrectly interpreted Subsection (b) of this Section and is subsequently implementing rules that improperly deny or limit the additional years of service credit mandated to members of the employee class defined in Subsection (a).

The ERS is implementing Subsection (b) based on the following interpretations:

1. A member of the affected employee class who is otherwise eligible to retire without the addition of three years to age and service credit will receive no additional years of service credit in computing the member's annuity;
2. A member of the affected employee class who is not eligible to retire without the age and service supplement will receive only the minimum service credit necessary to meet eligibility.

The ERS interpretation is limiting in nature and not congruous with the legislative purpose of this Section which is to lessen the adverse impact of privatization by providing additional benefits to the affected employee class. Section 814.1041 provides not only for extending eligibility for retirement to a broader number of affected employees but also to augment the annuity of all the "members of the employee class...who separate from state service at that time" by computing the annuity on "accrued service credit increased by three years". The importance of the service augmentation provision to the overall purpose of this section is reflected in the heading itself.

Section 814.1041 is specifically identified as a "Temporary Service Retirement Option" and not just a "Temporary Eligibility Retirement Option". The interpretation by the ERS is based on the purported intent of legislators may not be what the content of the law is.

I am further concerned that the actions of the ERS in this matter may raise an age discrimination issue because of the "adverse impact" this interpretation has on the older members of the employee class versus their younger counterparts. The ERS rules being implemented are resulting in cases in which younger members of the employee class with less actual service credit than older members are able to retire with more retirement service credit than some older members with more actual service credit. In limiting the service augmentation to only those members not eligible to retire without age and service enhancements, the ERS implementation is creating an inequitable pattern of benefits and raising the specter of age discrimination. I can assure you that it was not the intent of the legislature to discriminate against the older members of the affected employee class in the provision of benefits, and I consider any ERS interpretation, rule, or policy that has the effect of adverse impact - whether intended or not - to be improper.

Based on the foregoing concerns, I respectfully request an opinion from your office on the following issue:

Is the ERS interpretation and application of Section 814.1041 correct, taking into consideration the legislative history, the written provisions enacted, and the adverse impact on the older members of the employee class?

I am mindful of the special demands on your office at this time, but I respectfully request prompt action on this request due to the nature of the issue involved and the potential liabilities that may be accruing against the State. Your prompt attention to this matter will be appreciated by my office and the affected members of the employee class being denied benefits enacted by the legislature on their behalf.

Sincerely,



Ron Lewis

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enclosure