

the required population and a health officer, appointed under the provisions of Act No. 306, P.A. 1927, as amended, without vote of the electors.

FRANK J. KELLEY,
Attorney General.

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RETIREMENT SYSTEMS: Judges, Probate – Surplus in expense fund.

Probate Judges' Retirement Board is without statutory power to direct transfer of surplus moneys from the expense fund to the annuity reserve fund under Act 165, P.A. 1954, as amended. Surplus moneys from the expense fund may be transferred to the income fund.

No. 4155

August 31, 1964.

Mr. Lawrence L. Farrell
Executive Secretary
Probate Judges' Retirement System
330 Lewis Cass Building
Lansing, Michigan

You have requested my opinion on the following question:

“Does Act 165, P.A. 1954, the Probate Judges' Retirement Act, authorize the Probate Judges' Retirement Board or the executive secretary of said Board to transfer moneys from the expense fund of the retirement system to the annuity reserve funds where the balance in the expense fund exceeds anticipated expense of the retirement system for the current fiscal year?”

Act 165, P.A. 1954, as amended, being C.L.S. 1961 § 38.901 et seq.; M.S.A. 1962 Rev. Vol. § 27.3178(60.1) et seq., is known as the Probate Judges' Retirement Act.

In Sec. 21 of the act the legislature has created the annuity savings fund into which are paid the contribution of members of the retirement system. Upon a member's retirement from service his accumulated contributions are required to be transferred from the annuity savings fund to the annuity reserve fund.

The annuity reserve fund is established by the legislature pursuant to Sec. 22 of the act. In addition to the accumulated contributions of retired members of the system, this fund also contains 90% of the filing fees required by Sec. 31 of the act. The balance of the filing fees, or 10% thereof, is paid into the expense fund formed under Sec. 24 of the act. This fund has been made available by the legislature to pay the administrative expenses of the retirement system, exclusive of the amounts payable as annuities and other benefits under the act.

Sec. 23 of the act provides for an income fund for the purpose of crediting regular interest on the various funds of the retirement system, except the expense fund, and to provide a contingent fund out of which special requirements of any of the other funds of the retirement system may be met. This section of the probate judges' retirement act provides in pertinent part as follows:

“* * * Transfers for such special requirements shall be made only when the amount in the income fund exceeds the ordinary requirements of such fund as evidenced by a resolution of the board recorded in its minutes. * * * Any funds that may come into the possession of the retirement system in such manner, or any funds which may be transferred from the annuity savings fund by reason of lack of claimant, or because of a surplus in any fund created by this act, or any other moneys the disposition of which is not otherwise provided for herein, shall be credited to the income fund.” (Emphasis supplied)

The probate judges' retirement board is a creature of the legislature and its powers have been enumerated by the legislature. Under Sec. 23 of the act, should there be a surplus in any fund created by the act, and this would include the expense fund, the surplus is required to be credited to the income fund.

It must follow that the probate judges' retirement board may by resolution direct the transfer of any surplus in the expense fund to the income fund in accordance with authority vested in it by Sec. 23 of the act. Because the legislature has restricted the exercise of such power over surplus in any fund created by the act into the income fund only, the probate judges' retirement board is without power to direct such transfer from the expense fund into the annuity reserve fund. *Sebewaing Industries, Inc. v. Village of Sebewaing*, 337 Mich. 530 (1953).

Under Sec. 23 of the act, when the amount in the income fund exceeds the ordinary requirements of such fund, the probate judges' retirement board may by proper resolution of the board authorize the transfer of moneys from the income fund to the annuity reserve fund to meet special requirements that may arise.

It is, therefore, the opinion of the Attorney General that the probate judges' retirement board is without power to direct transfer of surplus moneys from the expense fund to the annuity reserve fund under Act 165, P.A. 1954, as amended.

FRANK J. KELLEY,
Attorney General.