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RETIREMENT SYSTEMS: Township—Municipal Employees.

ORDINANCES: Retirement benefits for township officers and employees.

TOWNSHIPS: Contract pension plan.

CONSTITUTIONAL LAW: Granting extra compensation.

Authorization to establish retirement systems and make contracts of group insurance pursuant to 1960 PA 27 applies equally to unchartered as well as chartered townships.

The legislature has not imposed any limitations on a township's contributions toward the premium for a contract pension plan.

The grant of prior service credit to elected officials who serve after the effective date of the pension plan does not violate the constitutional prohibition of "extra compensation."

A contract pension plan under 1960 PA 27 must apply equally to all township officials and full-time employees.

There is no legal bar against the establishment of a contract pension plan by a township which is already a member unit of the retirement system, established by the Municipal Employees' Retirement Act, although no officer or employee may participate in both.

Opinion No. 4818

June 11, 1974.

Hon. Allison Green
State Treasurer
Department of Treasury
Lansing, Michigan 48903

You have requested my opinion on several questions concerning 1960 PA 27; MCLA 41.901 *et seq.*; MSA 5.48(1) *et seq.* Your questions will be answered seriatim:

1. Do the provisions of 1960 PA 27, *supra*, apply to all Michigan townships or is the Act applicable only to charter townships?

It is my opinion that the legislature intended the act to apply equally to all townships. 1960 PA 27, § 1, *supra*, begins with the phrase: "Any township may . . . [provide retirement benefits or contract for insurance]." As our courts have stated repeatedly:

"It is a cardinal rule that the legislature must be held to intend the meaning which it has plainly expressed, and in such cases there is no room for construction, or attempted interpretation to vary such meaning." *Dussia v Monroe County Employees Retirement System*, 386 Mich 244, 249; 191 NW2d 307, 310 (1971).

Moreover, "any" means "every." *Harrington v Inter-State Business Men's Accident Association*, 210 Mich 327, 330; 178 NW 19, 20 (1920). Accord, *Sifers v Horen*, 385 Mich 195, 199 n 2; 188 NW2d 623, 624 n 2 (1971).

If the legislature had intended to limit the applicability of 1960 PA 27, *supra*, it would have not employed such broad language. The "plainly ex-

pressed" intent of the legislature is that 1960 PA 27, *supra*, applies equally to unchartered as well as chartered townships.

2. May a township board adopt a pension or retirement plan or provide insurance coverage of any type under 1960 PA 27, *supra*, by resolution of the township board, or must such action be taken by the adoption of an appropriate township ordinance?
3. If an ordinance is required, must such ordinance be adopted in accordance with MCLA 42.20 *et seq.*; MSA 5.46(20) *et seq.*, or in accordance with MCLA 41.181 *et seq.*; MSA 5.45(1) *et seq.*?

Since they are related, I shall consider your second and third questions together.

1960 PA 27, § 5, *supra*, provides:

“. . . Any township may exercise the powers granted hereunder by ordinance without necessity of amending its charter.”

The legislature, thus, has given “any township” the discretionary authority, i.e., “may exercise,” to decide whether or not it will provide retirement benefits or insurance coverage, or both, pursuant to 1960 PA 27, *supra*. Here again “any township” means all townships. However, once a township decides to exercise this discretionary authority, it must do so “by ordinance.” As with all township ordinances, the township must comply with the provisions of MCLA 41.181 *et seq.*; MSA 5.45(1) *et seq.*, in enacting the ordinance.

Charter townships must also enact the appropriate ordinance to implement the authority granted by 1960 PA 27, *supra*, and if a charter township chooses to act by ordinance, it must comply with the provisions of MCLA 42.20 *et seq.*; MSA 5.46(20) *et seq.*

It is my opinion, therefore, that all townships must implement the discretionary authority of 1960 PA 27, *supra*, by ordinance.

4. If an annuity pension plan, under contract with an insurance carrier, is adopted by the township pursuant to 1960 PA 27, *supra*, are there any monetary limits on the amount or percentage of salary that can be contributed to the plan from township moneys?

1960 PA 27, § 1, *supra*, reads in part:

“Any township may:

* * *

“(c) Contract with any such company granting annuities or pensions . . . and for such purposes *may pay any part of the premiums or charges for such . . . annuities or pensions.*” (Emphasis added.)

The legislature must be held to intend the meaning which it has plainly expressed. *Dussia v Monroe County Employees Retirement System, supra*. Thus, a township’s duty to contribute toward the cost of the contract pension plan under the statute is clearly permissive, i.e., a township “*may pay any part of the premiums.*” Since “any” means “every,” *Harrington v Inter-State Business Men’s Accident Association, supra*, the legislature

has further authorized townships to pay every "part of the premiums," if they so desire.

It is, therefore, my opinion that the legislature has not imposed any limitations on a township's contributions toward the premium for a contract pension plan under 1960 PA 27, § 1(c), *supra*.

5. Does the payment of annuity premiums, based on percentage of salary, for prior service of elected township officials represent retroactive compensation to such elected officials? If so, is such retroactive compensation prohibited?

In your correspondence with my office you explained that the township in question adopted a contract pension plan for its elected officials in 1969. The contract's "annuity formula" contained the provision that the "monthly pension will be 1% of employee's monthly compensation times the number of years eligible past service up to a maximum of 10 years." To acquire prior service credit the township officials must serve after the effective date of the plan. The contract contained a different computation and payment formula for the officials' future service, which you do not question.

The prohibition to which you refer is contained in Const 1963, art 11, § 3, which provides:

"Neither the legislature nor any political subdivision of this state shall grant or authorize extra compensation to any public officer, agent or contractor after the service has been rendered or the contract entered into."

While this is a long standing constitutional prohibition, its wording was altered in the Constitution of 1963. It is, therefore, appropriate to consider the debates of the constitutional convention to ascertain the intent of the provision, *Burdick v Secretary of State*, 373 Mich 578; 130 NW2d 380 (1964).

The present Const 1963, art 11, § 3 was offered to the constitutional convention as Committee Proposal 62. On behalf of the Committee on Miscellaneous Provisions and Schedule, Delegate Erickson offered the following reasons for their proposal:

"This is the first sentence of the present section 3 of article XVI [of Const 1908] with the word 'employe' deleted. The word 'employe' was not included in the 1850 constitution. Its use in the 1908 constitution has been interpreted to mean that retired employees may not receive increments in their retirement systems. This has proven a great hardship on retired employees whose benefits were based on a pay scale much below present day levels. Especially has this been true as regards a group of retired teachers. It is the belief of the committee that the deletion of reference to 'employe' in this provision will permit the legislature and municipal authorities to deal with the problem realistically.

". . . What this sentence is aimed to prohibit is the gratuitous grant of further compensation to contractors, agents and officers of the government after the fact."

2 Official Record, Constitutional Convention 1961, p. 2493.

With a minimum of debate and no substantial changes in wording, Committee Proposal 62 was adopted by the full convention. 2 Official Record, Constitutional Convention 1961, pp 2999-3000.

The clear intent of the Constitution's framers was to exempt all government employees from the "extra compensation" prohibition of Const 1963, art 11, § 3. In particular, the framers sought to allow the legislature and political subdivisions to increase the retirement benefits for government employees who were already retired, since the framers considered such increases to be "extra compensation."

That, however, is not the issue here. The township in question grants retirement benefits to its elected officials, who are subject to Const 1963, art 11, § 3, for service antedating the contract pension plan, only if they render service after the effective date of the plan. Whether this constitutes "extra compensation" is your question.

Although there is no Michigan precedent on this point, there is definitive case law elsewhere. Interpreting a constitutional prohibition identical to Const 1963, art 11, § 3, except that employees were subject to the ban, the Court in *Aldrich v The State Employees' Retirement System*, 49 Wash 2d 831, 833-834; 307 P2d 270, 271-272 (1957), stated:

"Prior service credit for services antedating the effective date of the state employees' retirement act cannot, standing alone, support a pension . . . There must be, in addition thereto, some service rendered after the effective date of the act, so that the act will constitute a part of the contract governing the subsequent employment. Then the pensions provided for under the act constitute deferred compensation for the subsequent service and are not gratuities predicated merely upon the prior service."

Accord, *Gossman v State Employees Retirement System*, 177 Neb 326; 129 NW2d 97 (1964). *Gubler v Utah State Teachers' Retirement Board*, 113 Utah 188; 192 P2d 580 (1948).

The Washington Supreme Court's reasoning is consistent with the intent of our Constitution's framers and should be followed. It should also be noted that Const 1963 does not prohibit increases in township officials' compensation during their term of office, OAG, 1967-1968, No 4,528, p 76 (August 18, 1967).

It is, therefore, my opinion that the grant of prior service credit to township officials who serve after the effective date of a township contract pension plan does not constitute "extra compensation" as prohibited by Const 1963, art 11, § 3.

6. If an annuity pension plan is adopted pursuant to 1960 PA 27, *supra*, must the adopted plan apply to all officials and to all full-time employees?

On this matter, 1960 PA 27, § 1, *supra*, simply provides:

"Any township may:

* * *

"(c) Contract with any such company granting annuities or

pensions for the pensioning of the officers and employees and for such purposes may pay any part of the premiums”

As is obvious, the provision has no explicit language as to whether or not the contract pension plan must apply equally to all officers and employees. However, our analysis should not be restricted to just those words. “In determining what is the proper construction of the controverted portion of the statutes, we must first look to the context of the statute itself” *In re Atherton's Estate*, 333 Mich. 193, 195; 52 NW2d 660, 661 (1952).

Thus, it is proper that we examine the preceding subsection of 1960 PA 27, § 1, which, in authorizing the purchase of life, accident and medical services insurance, provides:

“Any township may:

* * *

“(b) Make arrangements with any prepayment plans . . . insuring and covering its elected or appointed officers and employees or any classes thereof. . . .” (Emphasis added.)

Undoubtedly, if the legislature intended to authorize townships to establish separate contract pension plans for officers and employees, it would have done so explicitly. To conclude otherwise would be to ignore the precise manner in which the legislature granted the exact same authority in 1960 PA 27, § 1(b), *supra*. What the legislature does explicitly in one subsection, it would not do implicitly in the next. See, *Sebewaing Industries, Inc v Village of Sebewaing*, 337 Mich 530; 60 NW2d 444 (1953).

It is, therefore, my opinion that a contract pension plan, adopted pursuant to 1960 PA 27, § 1(c), *supra*, must apply equally to all township officials and full-time township employees.

7. May a township provide a contract pension plan, if the township is already a member unit of the retirement system established by the Municipal Employees' Retirement Act, MCLA 38.601 *et seq.*; MSA 5.4001 *et seq.*?

1960 PA 27, *supra*, has no explicit ban on a township providing a contract pension plan, if the township is already a member unit of the retirement system established by the Municipal Employees' Retirement Act, *supra*. In fact, 1960 PA 27, § 5, *supra*, indicates the legislature never intended such a prohibition:

“The authority hereby given shall be in addition to and not in derogation of any power existing in the township under the provisions of a statute or any charter now in effect”

Moreover, 1960 PA 27, § 4, *supra*, states:

“The provisions of this act shall not affect the validity of any retirement program . . . previously entered into by the township.”

While the Municipal Employees' Retirement Act, *supra*, does not contain an express prohibition on participating townships offering a contract pension plan, nevertheless § 2(f) of the Municipal Employees' Retirement

Act, *supra*, bans participation in the retirement system by any officer or employee:

“. . . who is included as an active member in any other pension plan or retirement system supported in whole or in part from the funds of the participating municipality”

Since a township's contract pension plan under 1960 PA 27, *supra*, must be open to all officers and employees, any officer or employee who takes part in the contract plan would, thereupon, be denied participation in the retirement system. See also, 1 OAG, 1957-1958, No 2,887, p 105 (March 12, 1957).

It is, therefore, my opinion that a township may provide a contract pension plan, even though it is a member unit of the retirement system established by the Municipal Employees' Retirement Act, *supra*. However, no township officer or employee may participate in both.

In summary, 1960 PA 27, *supra*, is applicable to all townships, whether charter or not. The legislature has not imposed any limitations on a township's contributions toward the premium for a contract pension plan. The grant of prior service credit to elected officials who serve after the effective date of the pension plan does not violate the constitutional prohibition of "extra compensation." A contract pension plan under 1960 PA 27, *supra*, must apply equally to all township officials and full-time employees. There is no legal bar against the establishment of a contract pension plan by a township which is already a member unit of the retirement system, established by the Municipal Employees' Retirement Act, *supra*, although no officer or employee may participate in both.

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CONSTITUTION: Uniform Rule of Taxation.

The act authorizing differential school millage within the same school district has been rendered unconstitutional by the simultaneous adoption of the 1963 constitutional provision for uniformity of taxation, Const 1963, art 9, § 3, and tax rate limitation, Const 1963, art 9, § 6.

Opinion No. 4817

June 24, 1974.

Honorable William L. Jowett
House of Representatives
State Capitol
Lansing, Michigan

You request my opinion whether 1933 PA 162; MCLA 211.251, *et seq.*; MSA 15.511 *et seq.*; is still viable or if it has been rendered unconstitutional by the popular ratification of the 1963 Const, art 9, § 3.