

Carolene Products Co v Thomson, supra, it is controlling. Therefore, when there is no rational basis for discrimination between the types of products in order to protect the public health, it is a denial of due process of law to prohibit filled milk products from appearing in the marketplace while allowing imitation milk products to proliferate. In addition, prohibition of "Milnot" under these circumstances is arbitrary and capricious and, hence, denies to Milnot Company equal protection of the laws. Milnot is, as found by the Federal Court in *Milnot Co v Richardson, supra*, a wholesome, nutritious, and useful food source. Its acceptance and use is spreading. If there exists some possibility of confusion in the mind of the consuming public as a result of the availability of Milnot, the Michigan *Carolene* case, *supra*, holds that due process of law requires that the sale of Milnot be regulated rather than prohibited. Prohibition exceeds the boundaries of the valid exercise of the state's police power where regulation will sufficiently protect the public health, safety and welfare. I conclude that the Michigan Filled Milk Act, 1945 PA 330, *supra*, is unconstitutional as applied to "Milnot" for the reasons set forth above.

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RETIREMENT SYSTEMS: Public School Employees.

1974 PA 244 does not retrospectively grant deferred retirement allowances to persons who, prior to the effective date of 1974 PA 244, left public school employment after 10 years of service without claiming a refund of their accumulated retirement contributions.

The new retirement allowance formulas in §§ 15a and 15b of 1945 PA 136, as amended by 1974 PA 244, are to be used in computing the retirement allowance of members who, when they left public school employment prior to July 1, 1974, were entitled to a deferred retirement allowance.

Opinion No. 4903

October 15, 1975.

Mr. Norvel A. Hansen
Executive Director
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Lansing, Michigan

You have requested my opinion concerning a number of questions on behalf of the Michigan Public School Employees' Retirement Board. Further, you have indicated that the first two questions are particularly pressing since they affect a significant number of people. Thus, those two questions, set forth below, will be answered in this opinion with the remaining questions to be answered at a later date.

"1. Is an inactive member, who prior to enactment of Act No. 244, P.A. 1974 acquired ten years of service credit under Chapter 1, left his accumulated contributions on deposit and had not acquired vesting or entitlement to a deferred retirement allowance under the retirement

provisions in force at the time he terminated, now entitled to a retirement allowance upon attainment of age 60 pursuant to Section 17?

"2. What formula is to be used in computing a retirement allowance for a member who terminated his employment prior to July 1, 1974, left his accumulated contributions on deposit, was vested under the Act in existence when he terminated and will be entitled to a deferred retirement allowance upon attainment of age 60?"

In Chapter 1 of 1945 PA 136, as amended: MCLA 38.201 *et seq*; MSA 15.893(1) *et seq*, the legislature has established the Michigan public school employees' retirement system. Section 17 of 1945 PA 136, as last amended by 1974 PA 244, *supra*, provides:

"Should a person who has 10 or more years of credited service for service performed as a public school employee under this chapter, chapter 1 of Act No. 184 of the Public Acts of 1937, as amended, or chapter 1, of Act No. 56 of the Public Acts of 1941 leave service before attaining age 60 years for a reason other than his retirement or death, he shall be entitled to a deferred retirement allowance after attaining age 60 years computed according to section 15a or 15b as that section was in force at the time he terminated his employment with his reporting unit upon his application therefor filed with the retirement board if he leaves on deposit his accumulated contributions standing to his credit in the annuity accumulation fund."

This statutory section provides that, after 10 years of service as a public school employee, a person may leave public school service, leave on deposit his accumulated contributions and receive a deferred retirement allowance at age 60. The question you raise is whether this statutory section applies retrospectively to persons who, prior to August 1, 1974, the effective date of 1974 PA 244, *supra*, left public school employment after 10 years of service and did not claim a refund of their accumulated contributions from the retirement system.

It is a settled rule of statutory construction that a statute is only prospective in its operation unless a contrary intent that the statute apply retrospectively clearly appears from the context of the statute. *In re Davis' Estate*, 330 Mich 647, 651; 48 NW2d 151, 153 (1951); *Olkowski v Aetna Casualty & Surety Company*, 53 Mich App 497, 503-504; 220 NW2d 97, 100 (1974), *aff'd* 393 Mich 758; 223 NW2d 296 (1974). The contrary intent only clearly appears from the context of the statute when:

"... a purpose to give it a retrospective force is expressed by clear and positive command, or to be inferred by necessary, unequivocal and unavoidable implication from the words of the statute taken by themselves and in connection with the subject matter, and the occasion of the enactment, admitting of no reasonable doubt, but precluding all question as to such intention." *In re Davis, supra*, p 651.

Section 17 of 1945 PA 136, as last amended by 1974 PA 244, *supra*, contains no language that either expressly or by necessary implication indicates that such section is intended to operate retrospectively. Thus, the conclusion is compelled that your first question must be answered in the

negative. Section 17 only applies to persons who, after 10 or more years of credited service as a public school employee, terminate their public school employment after August 1, 1974, the effective date of 1974 PA 244. However, persons who terminated their public school employment prior to August 1, 1974, with 10 or more years of credited service, are, of course, entitled to a refund of their accumulated contributions. See Sections 1(n) and (o) and Section 22 of 1945 PA 136, as amended, *supra*.

Your second question relates to the applicable retirement allowance benefit formula for persons who left public school employment prior to July 1, 1974 and, at the time they left public school employment, had sufficient credited service and were of sufficient age to be eligible for a deferred retirement allowance pursuant to Section 15 or 17 of 1945 PA 136, *supra*, prior to their amendment by 1974 PA 244, *supra*. In answering this question, it must first be observed that Section 17 of 1945 PA 136, as last amended by 1974 PA 244, *supra*, provides, with regard to deferred retirement allowances that

“ . . . he shall be entitled to a deferred retirement allowance after attaining age 60 years *computed according to section 15a or 15b as that section was in force at the time he terminated his employment.* . . . ” (Emphasis added)

The category of persons covered in your second question left public school employment at a time when Section 15b of 1945 PA 136, prior to its amendment by 1974 PA 244, *supra*, provided in pertinent part, for a retirement allowance, as follows:

“Sec. 15b. . . . (a) An annuity which shall be the actuarial equivalent of his accumulated contributions standing to his credit in the annuity accumulation fund at the time of his retirement; and

(b) A pension which when added to his annuity shall equal, but not exceed, the product of his total years, and fraction of a year, of credited service multiplied by the sum of 1% of the first \$4,200.00 of his final average compensation and 1.5% of his final average compensation in excess of \$4,200.00: . . . ”

However, Section 15b of 1945 PA 136, as amended by 1974 PA 244, *supra*, provides, in pertinent part, as follows:

“ . . . A member whose retirement allowance effective date was on or after July 1, 1974, shall receive an annuity and pension which, when added together, shall equal but not exceed the product of his total years and fraction of a year of credited service, multiplied by 1½% of his final average compensation. . . . ”

Thus, there appears to be a conflict between Sections 15b and 17 of 1945 PA 136, as amended by 1974 PA 244, *supra*. Section 17 appears to provide that the category of persons covered in your second question are to receive a deferred retirement allowance computed upon the basis of the lower retirement allowance benefit formula in force in Section 15b at the time they terminated public school employment, prior to the amendment of Section 15b by 1974 PA 244, *supra*. However, Section 15b, as amended

by 1974 PA 244, *supra*, clearly commands that any member whose retirement allowance effective date is on or after July 1, 1974, shall receive the increased benefit formula contained therein.

It is a cardinal rule of statutory construction that effect must be given, if possible, to every portion of a statute and that all parts of a statute should be considered together to provide a harmonious interpretation of the statute as a whole. *In re Chamberlain's Estate*, 298 Mich 278, 283; 299 NW 82, 86 (1941). This may be accomplished by, first, giving effect to the plain language of Section 15b of 1945 PA 136, as amended by 1974 PA 244, *supra*, that a person whose retirement allowance effective date is after July 1, 1974, shall receive the increased retirement allowance benefit formula set forth therein.

Second, the language of Section 17 of 1945 PA 136, as amended by 1974 PA 244, *supra*, still may be given effect in the following manner. If, for example, the legislature should subsequently increase the retirement allowance benefit formula in Section 15b to 2% of final average compensation and change the retirement allowance effective date to July 1, 1978, without more, Section 17 would operate to preclude granting such increase to persons who terminated their public school employment prior to July 1, 1978, and were eligible to receive a deferred retirement allowance after July 1, 1978.

Interpreting the two statutory sections in question in this way harmonizes them and gives meaning and effect to each. Further, this statutory interpretation is consistent with the legislative history of 1974 PA 244, *supra*, which originated as House Bill No. 5888. In House Bill No. 5888, as introduced, Section 17 was identical to Section 17 as enacted into law in 1974 PA 244, *supra*. However, Section 15b of House Bill No. 5888, as introduced, provided, in pertinent part, as follows:

“ . . . A MEMBER WHO RETIRES FROM A REPORTING UNIT WHEREIN MEMBER CONTRIBUTIONS WERE NOT WITHHELD IMMEDIATELY PRIOR TO THE EFFECTIVE DATE OF HIS RETIREMENT, AND TERMINATED HIS EMPLOYMENT THEREIN AFTER JULY 1, 1974, SHALL RECEIVE AN ANNUITY AND PENSION WHICH, WHEN ADDED TOGETHER, SHALL EQUAL BUT NOT EXCEED THE PRODUCT OF HIS TOTAL YEARS AND FRACTION OF A YEAR OF CREDITED SERVICE, MULTIPLIED BY 1½% OF HIS FINAL AVERAGE COMPENSATION. . . .” (Emphasis added)

However, Section 15b, as enacted into law in 1974 PA 244, *supra*, plainly refers to “[a] member whose retirement allowance effective date was on or after July 1, 1974,” rather than “A MEMBER WHO . . . TERMINATED HIS EMPLOYMENT THEREIN AFTER JULY 1, 1974,” as originally set forth in Section 15b of House Bill No. 5888 as introduced. Thus, the amendment to Section 15b during the legislative process of enacting 1974 PA 244, *supra*, demonstrates that the increased retirement allowance benefit formula in Section 15b is applicable to persons who terminated their public school employment prior to July 1, 1974 and are entitled to a deferred retirement allowance effective after July 1, 1974.

Your second question also includes within it the problem of the applicable retirement allowance benefit formula for plan 1 members who left public school employment prior to July 1, 1974 and, at the time they left public school employment, had sufficient credited service and were of sufficient age to be eligible for a deferred retirement allowance pursuant to Section 15 or 17 of 1945 PA 136, *supra*, prior to their amendment by 1974 PA 244, *supra*. A plan 1 member is a person "who is not or does not become covered under the federal social security old-age and survivors' insurance program on account of the same employment which entitles him to membership in the retirement system." See Section 14a(b) of 1945 PA 136, as amended, *supra*.

The retirement allowance benefit formula for plan 1 members is contained in Section 15a of 1945 PA 136, as amended, *supra*. Further, 1974 PA 244, *supra*, amended Section 15a of 1945 PA 136, *supra*, by adding subsection (e), which provides for an increased retirement allowance benefit formula as follows:

"Effective July 1, 1974, a member receiving an allowance under this section shall receive a supplemental pension which, when added to his annuity, shall provide a minimum annual allowance of \$125.00 for each year of credited service under this chapter or chapter 1 of prior acts if the person satisfies the other conditions of this chapter, subject to option selection or early retirement. . . ."

Thus, the increased retirement allowance benefit formula of Section 15a of 1945 PA 136, as amended by 1974 PA 244, *supra*, clearly applies to persons receiving a retirement allowance on or after July 1, 1974. The same reasoning applied above to Sections 15b and 17 is equally applicable to Sections 15a and 17. Section 15a may be given effect according to its plain terms by ruling that any person who is receiving a retirement allowance on or after July 1, 1974, shall receive the increased retirement allowance benefit formula set forth therein. Further, if, subsequently, the legislature should increase the retirement allowance benefit formula in Section 15a to \$150.00 for each year of credited service effective July 1, 1978, without more, Section 17 would operate to preclude granting such increase to persons who terminated their public school employment prior to July 1, 1978 and were eligible to receive a deferred retirement allowance after July 1, 1978.

Interpreting Sections 15a and 17 of 1945 PA 136, as amended by 1974 PA 244, *supra*, in this manner harmonizes them and gives meaning and effect to each. This statutory interpretation is strengthened by the legislative history of 1974 PA 244, *supra*, which originated as House Bill No. 5888. As noted above, in House Bill No. 5888, as introduced, Section 17 was identical to Section 17 as enacted into law in 1974 PA 244, *supra*. However, Section 15a of House Bill No. 5888, as introduced, did not contain subsection (e). Such subsection, increasing the retirement allowance benefit formula for members receiving a retirement allowance on or after July 1, 1974, was added to Section 15a during the course of its legislative enactment; thereby indicating an intent that the language of Section 17, basing deferred retirement allowances on the statutory formula in force

at the time of termination of employment, was not intended to apply to the increase in the retirement allowance benefit formula contained in Section 15a of 1945 PA 136, as amended by 1974 PA 244, *supra*. Finally, it is also clear that the legislature did not intend to provide increased deferred retirement allowances under Section 15b while denying such increase under Section 15a to persons who had terminated their public school employment prior to July 1, 1974 and were entitled to a deferred retirement allowance under the provisions of 1945 PA 136, *supra*, prior to its amendment by 1974 PA 244, *supra*.

In summary, it is my opinion that the increased retirement allowance benefit formulas in Sections 15b and 15a of 1945 PA 136, as amended by 1974 PA 244, *supra*, are to be used in computing the retirement allowances for members who terminated public school employment prior to July 1, 1974 and are entitled to a deferred retirement allowance after July 1, 1974.

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WORDS AND PHRASES: "Circulate," "print," "publish," "qualified newspaper"

NEWSPAPERS: Publication of ordinances.

MUNICIPALITIES: Publication of ordinances.

Municipalities must publish ordinances in a qualified newspaper that circulates within their municipalities. Fourth class cities and villages, however, are additionally obligated to publish ordinances in a newspaper printed within such municipality.

The terms "publish" and "circulate" within the context of notice statutes are synonymous and refer to the act of making known to the general public. The term "print," however, refers to the mechanical process whereby the impression of words are stamped upon paper.

Opinion No. 4891

October 23, 1975.

Honorable Jack Welborn
State Senator
Capitol Building
Lansing, Michigan

You have requested my opinion, in effect, of the following question:

"Must a municipality publish its official ordinances and legal notices in the only 'qualified' newspaper located within the municipality?"

The term "publish" as used herein refers to the act of making information known to the general public,¹ as distinguished from the term "print"²

¹ 73 CJS, Publish, pp 1250-1251.

² 72 CJS, Print, pp 843-846 and Black's Law Dictionary, 3rd Ed, pp 1417-1418.