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VETERANS: Retirement

RETIREMENT AND PENSIONS: Veterans

Pursuant to the county retirement act, county employees who entered military service prior to commencing county service are entitled to retirement credit for the period of military service. To obtain such retirement credit, the county employee must pay to the retirement system an amount equal to the applicable contribution together with interest at the rate of 3% from the date of military service to the date of payment computed at a flat rate and not compounded annually.

Opinion No. 4944

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You have requested my opinion on two questions concerning 1975 PA 182. That act amended MCLA 46.12a; MSA 5.333(1) by adding a new paragraph (14), which provides:

"Upon the approval of the county board of commissioners, a member who is drafted or enlists, or who was drafted or enlisted in a military service of the United States and who has been on active duty in the military service shall have the military service active duty credited to him upon his payment to the retirement system of an amount equal to the contribution, together with interest at the rate of 3%, from the dates of the military service to the dates of payment. The contribution shall be based on the period of military service claimed and the member's applicable contribution program and annual rate of compensation in effect at the time of payment. Military service shall not be credited a member if he received credit for the service under another provision of this section or this act. Not more than 6 years of service shall be credited to a member for all military service actually served by him."

First, you ask whether retirement credit for military service can be given under MCLA 46.12a(14); MSA 5.333(1)(14) only to those employees who had left county employment to enter the military.

MCLA 46.12a(14); MSA 5.333(1)(14) authorizes the grant of retirement credit to

"... a member who is drafted or enlists, or who was drafted or enlisted in a military service of the United States. . . ." (emphasis added)

The term "member" refers to an active county employee. All county employees who leave county service to enter the military are, thus, encompassed by the language "who is drafted or enlists." That being the case, the clear intent of "or who was drafted or enlisted" is to include the county employees who served in the military prior to their starting county employment.

It is, therefore, my opinion that retirement credit must be given for military service to county employees who entered the military either prior to or after commencing county service.

Second, you ask whether county employees must, to earn military service credit, pay the required contributions with interest at a rate of 3% per annum or at a flat 3% rate.

The pertinent language of MCLA 46.12a(14); MSA 5.333(1)(14) is as follows:

“. . . a member . . . shall have the military service active duty credited to him upon his payment to the retirement system of an amount equal to the contribution, together with interest at the rate of 3%, from the dates of the military service to the date of payment. . . .”

Thus, the statutory provision establishes a rate of 3% and specifies the span of time during which the 3% interest is to be imposed. Taken literally, the calculation is to be applied at a flat 3% rate.

There are numerous statutes referring to rates of interest for various purposes and the legislature has referred to rates of interest in these statutes for regular periods. For example, MCLA 438.31; MSA 19.15(1) speaks of interest “at the rate of \$5.00 upon \$100 for a year” and also speaks of “7% per annum” and MCLA 205.59; MSA 7.530 of “1% per month.” MCLA 38.802(1); MSA 27.125(2) (1), in reference to the judges’ retirement system, defines “regular interest” to mean the rate or rates of interest per annum, compounded annually, as the board shall determine from time to time. MCLA 38.1(o); MSA 3.981(1) (o), in reference to the state employees’ retirement system, similarly defines “regular interest” in terms of being not lower than 1% per annum nor more than 4% per annum, compounded annually. Similar definitions appear in reference to the municipal employees’ retirement system, MCLA 38.602; MSA 5.4002, the probate judges’ retirement system, MCLA 38.902; MSA 27.3178(60.2), and the public school employees’ retirement system, MCLA 38.201; MSA 15.893(1).

There is no comparable definition in the statute authorizing counties to establish a retirement system for county employees.

In *Hoyle v Page*, 41 Mich 533; 2 NW 665 (1879), the court, speaking through Justice Cooley, held that interest cannot be compounded in the absence of a statute providing for it. *Hoyle* was followed in *Buchtel v Mason*, 67 Mich 605; 35 NW 174 (1887) and *Gay v Berkey*, 137 Mich 658; 100 NW 920 (1904).

It is, therefore, my opinion that the 3% interest referred to in 1975 PA 182, *supra*, is to be applied at a flat rate and not compounded either annually or for any other period.

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