"Sec. 19. In addition to the requirements of section 18 a person shall not:

"(a) Use or employ, in connection with collection of a claim, a person acting as a peace or law enforcement officer or any other officer authorized to serve legal papers.

"(b) Use or threaten to use physical violence in connection with collection of a claim.

"(c) Publish, cause to be published, or threaten to publish lists of debtors, except for credit reporting purposes, when in response to a specific inquiry from a prospective credit grantor on a debtor, or use shame cards, shame automobiles, or otherwise to bring public notice that the consumer is a debtor, except with respect to legal proceedings which are instituted.

"(d) Use any method to harass, oppress, or abuse a person or use profane or obscene language.

"(e) Use a method contrary to postal laws or regulations to collect accounts.

"(f) Fail to implement procedures designed to prevent violations by employees."

FRANK J. KELLEY,
Attorney General.

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RETIREMENT SYSTEMS: State employees

Members who have either acquired 25 years of service or have left state service and elected to come under the deferred retirement plan may elect retirement Option A.

The State Employees' Retirement Board does not have the power to establish a maximum time limit for the repayment of refunded contributions to restore forfeited service credit.

The State Employees' Retirement Board has discretionary authority to raise the rate of regular interest charged on the repayment of refunded contributions above the interest rate paid on refunds of employee contributions.

The annual leave and longevity pay earned during the employee's 5 years of highest compensation should be used to compute his or her "final average compensation."

Periods of absence without pay, for which no service credit was earned, should not be included within the "5 consecutive years" used in the computation of final average compensation.

As of the effective date of 1955 PA 237, benefits due under the State Employees' Retirement Act may be offset by workmen's compensation benefits only as provided in MCLA 38.23; MSA 3.981(23), dealing with duty disability benefits, and MCLA 38.27(e); MSA 3.981(27)(e), dealing with death benefits.

Opinion No. 4965 April 16, 1976.

Mr. Stephen Van Note, Director
Bureau of Retirement Systems
Mason Building
Lansing, Michigan

You have requested my opinion on several questions concerning the State Employees' Retirement Act, 1943 PA 240, as amended; MCLA 38.1 *et seq;* MSA 3.981(1) *et seq*. Your questions will be answered seriatim:

> 1. Pursuant to MCLA 38.31(b); MSA 3.981(31)(b), are only members with 25 years of service qualified to elect "Option A" (as set forth in MCLA 38.31(a); MSA 3.981(31)(a)), or are deferred retirants under MCLA 38.20(4); MSA 3.981(20)(4) also so qualified?

On this point, MCLA 38.31(b); MSA 3.981(31)(b) provides:

> "*A member who* continues in the employ of the state on and after the date he *either* acquires 25 years of service credit, *or* becomes entitled to retire with a service retirement allowance provided for in section 20, *whichever occurs first,* may by written declaration duly executed and filed with the retirement board, in the manner and form prescribed by the retirement board, elect option A, provided for in subdivision (a), and nominate a joint beneficiary whom the retirement board finds to be dependent upon the member for at least 50% of his support, with regard to his retirement allowance provided for in section 20 of this act in the same manner as if he were then retiring from service, notwithstanding that he may not have attained age 60 years. . . ." (emphasis added)

As the Supreme Court reaffirmed in *Dussia* v *Monroe County Employees Retirement System,* 386 Mich 244, 249; 191 NW2d 307, 310 (1971):

> " '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.' "

Option A may be elected pursuant to MCLA 38.31(b); MSA 3.981(31)(b) whenever a member either remains in state employment after 25 years of service, or "becomes entitled to retire with a service retirement allowance" under MCLA 38.20; MSA 3.981(20), "whichever [date] occurs first." MCLA 38.20(1); MSA 3.981(20)(1) allows a member, meeting all eligibility requirements, to elect Option A at the time of his or her retirement. MCLA 38.20(4); MSA 3.981(20)(4), in authorizing deferred retirements, provides:

> "If a member has 10 or more years of service credited to his service account, or has at least 8 years service as an elected or appointed officer credited to his service account, and is separated from the service of the state, for a reason other than his retirement or death, he shall remain a member during the period of his absence from the state service for the exclusive purpose only of receiving a service retirement allowance provided for in this section. If the member withdraws all or part of his

accumulated contributions, he shall thereupon cease to be a member. . . . If an employee has heretofore selected an option as provided under section 31(a), but died prior to the effective date of his retirement, the option selected by the employee shall be carried out and the beneficiary or beneficiaries shall be entitled to all advantages due thereunder."

It is readily apparent that the legislature established two distinct classes of members who are eligible to elect Option A. One class is that of members who have acquired 25 years of service; the other class is that of members who have left state service and have elected to come under the deferred retirement plan.

2. Does the State Employees' Retirement Board have the authority to establish a maximum time limit for repayment of refunded contributions after reentry into state service for the purpose of restoring forfeited service credit?

When a former state employee returns to state service, MCLA 38.16; MSA 3.981(16) provides:

". . . he shall again become a member of the retirement system. An employee who has heretofore reentered or who hereafter reenters state service within 5 years after the date of his last separation from state service, or who accumulates 5 or more years of continuous service credit as a member of the retirement system after reentering state service, shall have the service credit forfeited by him at the time he last separated from service restored to his credit, if he has not withdrawn his accumulated contributions from the employees' savings fund, *or he returns to the fund all amounts he may have previously withdrawn therefrom, together with regular interest thereon computed from the date of withdrawal to the date of repayment. . . .*" (emphasis added)

The statute does not specify any time limit for the repayment of refunded contributions to restore forfeited service credit. Nor is any power granted to the retirement board to establish such a time limit. The statute simply provides that forfeited service credit is not restored until all refunded contributions have been repaid with interest and the applicable five year requirement is met.

Retirement boards are creatures of the legislature, and it has enumerated their powers. OAG, 1963-1964, No 4155, p 453 (August 31, 1964).

It is, therefore, my opinion that the State Employees' Retirement Board does not have the power to establish a maximum time limit for the repayment of refunded contributions to restore forfeited service credit.

3. May the State Employees' Retirement Board raise the rate of interest to be charged on repayment of refunded contributions by returning state employees above the interest rate paid by the retirement system on refunds of employee contributions?

MCLA 38.16, MSA 3.981(16) authorizes the restoration of forfeited service credit to employees who reenter state service and repay their refunded contributions ". . . together with regular interest thereon computed from the date of withdrawal to the date of repayment."

The setting of rates of "regular interest" is the duty of the State Employees' Retirement Board, pursuant to MCLA 38.1(o); MSA 3.981(1)(o), which provides:

> " 'Regular interest' means such *rate or rates* per annum, compounded annually, as the retirement board shall from time to time determine, but, for the purposes of employee refunds, the interest rate payable shall not exceed 4% per annum, compounded annually." (emphasis added)

The retirement board, thus, has the authority not only to set a rate of regular interest, but rates of regular interest. Further, in establishing the maximum rate of interest for one purpose (refunds of employee contributions), the legislature has clearly indicated that the retirement board may set different rates of interest for different purposes.

It is, therefore, my opinion that the State Employees' Retirement Board has discretionary authority to raise the rate of regular interest charged on the repayment of refunded contributions above the interest rate paid on refunds of employee contributions.

> 4. Should the annual leave and longevity pay received during, but earned prior to, a member's 5 years of highest compensation be used in the computation of his or her "final average compensation"?

The term "final average compensation" is defined for the State Employees' Retirement Act, *supra,* by MCLA 38.1(r); MSA 3.981(1)(r), which provides:

> ". . . final average compensation shall mean the average of a member's compensation for 5 consecutive years within his years of service beginning the first day of January, April, July or October, in which his compensations were highest."

Since MCLA 38.1(q); MSA 3.981(1)(q), excludes only "remuneration paid in lieu of accumulated sick leave," both annual leave and longevity pay come within the term "compensation" for the purposes of the State Employees' Retirement Act, *supra.*

In Memorandum Opinion No. 617, dated May 2, 1960, to the then Commissioner of the State Police, Joseph A. Childs, the following question had been asked:

> " 'Should the Department of Public Safety in computing the amount of retirement salary due a pensioned police officer include all longevity money RECEIVED during the last two years of service, or should the Department include only that portion EARNED during the last two years of service?' "

The question concerned MCLA 28.107; MSA 3.337, which at that time provided in pertinent part:

> "Every member who has been retired following 25 years of service, or because of total disability, shall receive an annual pension payable monthly, equal to 50% of the average annual salary for the last 2 years such member was in service."

The Attorney General concluded:

> ". . . longevity pay attributable to, that is, earned during the last two years of service with the Department of Public Safety, is to be included in the basis for retirement compensation under Section 7(a) of the Department of Public Safety Pension Act. Therefore, the average annual salary for the last two years of service will include longevity pay earned during that period, regardless of the date it is paid."

Similarly, in OAG, 1949-1950, No 1150, p 585 (June 12, 1950), the Attorney General was asked whether payments for unused annual leave should be used in determination of "final average compensation" under the State Employees' Retirement Act, *supra*. The controlling provision then provided:

> " 'Average final compensation' shall mean the annual average of the highest pay received by a member during a period of 5 consecutive years of service contained within his 10 years of service immediately preceding his retirement . . . ."

The Attorney General stated:

> "The compensation for unused annual leave in each of the 5 consecutive years of service was earned during the payroll period though not necessarily paid to the employee during that period. While 'average final compensation' is defined as the annual average of the *highest pay received* by a member during the period of 5 consecutive years of service, it is our opinion that this phrase means compensation which has been earned during these pay periods.
>
> "We therefore conclude that amounts earned for annual leave and which the employee was entitled to receive under the rules of the Civil Service Commission during the five year period under consideration should be regarded as a part of the compensation used for determining 'average final compensation' regardless of when such payments were received by the employee." OAG, No 1150, *supra*, p 586

Both opinions conclude that final average compensation should be calculated on an accrual, rather than a cash, basis. Thus, it is compensation earned during the years in question which is determinative.

It is, therefore, my opinion that annual leave and longevity pay received during, but earned prior to, a member's 5 years of highest compensation should not be used to compute his or her "final average compensation."

> 5. Should periods of absence without pay be included within the "5 consecutive years" used in the computation of final average compensation?

This question concerns MCLA 38.1(r); MSA 3.981(1)(r), which provides in pertinent part:

> ". . . final average compensation shall mean the average of a member's compensation for 5 consecutive years within his years of service beginning the first day of January, April, July or October, in which his compensations were highest."

Obviously, the critical phrase for your question is "5 consecutive years within his years of service." In determining legislative intent, words should be accorded their ordinary meaning. *Detroit* v *Tygard*, 381 Mich 271; 161 NW2d 1 (1968). Webster's New International Dictionary, p 482 (3d ed, 1964), defines consecutive as "following esp. in a series: one right after the other often with small intervening intervals: successive, sequent . . . having no interval or break: continuous . . . ."

The words of a statute must, of course, be read together to effectuate the intention of the legislature. *Dussia* v *Monroe County Employees Retirement System, supra.* The "5 consecutive years" must be selected from the member's "years of service." However, a member does not receive service "credit" for any period "of more than 1 month's duration," when he or she is absent without pay, MCLA 38.1(i); MSA 3.981(1)(i). Thus, such periods of time would not be included within the member's "years of service."

I have been advised that the State Employees' Retirement Board has, over the years, consistently excluded periods of absence without pay from the computation of final average compensation. The construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration and ought not be overruled without cogent reasons. *Magreta* v *Ambassador Steel Co*, 380 Mich 513; 158 NW2d 473 (1968).

It is, therefore, my opinion that periods of absence without pay, for which no service credit was earned, should not be included within the "5 consecutive years" used in the computation of final average compensation.

In calculating the 5 "consecutive" years, however, the retirement system must use the member's periods of service as they follow "one right after the other." To illustrate this mandate, let us consider a hypothetical member who will retire on December 31, 1975. His five years of "highest" compensation are his last five. In 1972, however, he took a three month leave without pay, for which he received no service credit. That being the case, the retirement system must include his last three months of 1970 in its computation of "final average compensation." The retirement board may not pick and choose among periods of service.

> 6. Should benefits provided under the State Employees' Retirement Act, *supra,* be offset by workmen's compensation or similar benefits?

Your request notes that MCLA 38.32; MSA 3.981(32) had provided, in pertinent part:

> "Any amounts which may be paid or payable under the provisions of any workmen's compensation, or pension, or similar law to a member, or to the dependents of a member on account of any disability or death, shall be offset against and payable in lieu of any benefits payable from funds provided by the employer under the provisions of this act on account of the same disability or death. . . ."

You further note that MCLA 38.32; MSA 3.981(32) was repealed by 1955 PA 237, and ask whether it is now proper to offset any such benefits against benefits due under the State Employees' Retirement Act, *supra.*

A review of the Act reveals only two instances in which workmen's compensation or similar benefits shall be offset against benefits due under the State Employees' Retirement Act, *supra.* MCLA 38.23; MSA 3.981(23) provides, in pertinent part:

> "Upon retirement for disability, as provided for in section 21, a member who has not attained age 65 years shall receive the following benefits, subject to the provisions of sections 33 and 34 of this act.
>
> (a) A disability retirement allowance of ⅔ of his final average compensation, said retirement allowance to begin as of the date of his disability, but not more than 6 months prior to the date his application for disability retirement was filed with the retirement board, nor prior to the date his name last appeared on a state payroll with pay, whichever is later, and to continue to his attainment of age 65 years or recovery or death, whichever event shall first occur. Said disability retirement allowance, payable to any disability retirant, shall not exceed $2,200.00 per annum, nor be more than an amount which when added to the statutory workmen's compensation benefits applicable in his case shall exceed his final compensation. . . ."

MCLA 38.27(e); MSA 3.981(27)(e) provides:

> "In no case shall the total of the retirement allowances payable under paragraphs (b), (c) and (d) of this section, on account of the death of a member or retirant, exceed $2,400.00 per annum, nor an amount which, when added to the statutory workmen's compensation benefit to which the dependents of said member or retirant may be entitled, exceeds his final compensation."

Both provisions were amended by 1955 PA 237 to delete references to MCLA 38.32; MSA 3.981(32) and to mandate that workmen's compensation should be offset against these benefits only when the combination of the two would otherwise exceed the member's final compensation.

It is, therefore, my opinion that, as of the effective date of 1955 PA 237, benefits due under the State Employees' Retirement Act, *supra,* may be offset by workmen's compensation benefits only as provided in MCLA 38.23; MSA 3.981(23), dealing with duty disability benefits, and MCLA 38.27(e); MSA 3.981(27)(e), dealing with death benefits.

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