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**RETIREMENT AND PENSIONS:** Department of Public Safety Pension, Accident, and Disability Fund.

**RETIREMENT AND PENSIONS:** Reimbursement to pension fund after reinstatement of a dismissed state trooper.

Where a state trooper, after dismissal, withdrew his contributions to the Public Safety Pension, Accident, and Disability Fund and the trooper was subsequently reinstated by the Civil Service Commission, the trooper may,

but is not required to, repay the contributions. If, however, the trooper fails to reimburse the fund, he will receive retirement credit only for his years of service from the date of reinstatement.

Opinion No. 5074

August 3, 1976.

Colonel George L. Halverson  
Director  
Department of State Police  
714 South Harrison Road  
East Lansing, Michigan 48823

You have requested an opinion relating to the dismissal of a trooper from the Department of State Police who was reinstated by order of the Civil Service Commission approximately six months after the dismissal. Upon departure from the Department, the officer withdrew his contributions which had accumulated in the Department of Public Safety Pension, Accident, and Disability Fund during the six years he was in state service.

You have asked whether the Director of the Department of State Police may:

- “(a) Recover the the funds in the instant case for the purposes of the pension fund.
- “(b) Deny reemployment to a person previously employed by this department, absent full restoration of pension fund withdrawals, when ordered by the State Civil Service Commission to return such employee to employment.
- “(c) If such person is reemployed, absent restoration of pension funds, what penalty, if any, is assessed against the person at time of retirement, i.e., reduced credit time for pension, reduced pension benefits.
- “(d) If a penalty, or restoration of funds, does such penalty or restoration include interest at the prevailing rate, during time of withdrawal, normally accrued to the pension fund.”

The Department of Public Safety Pension, Accident, and Disability Fund was created pursuant to 1935 PA 251, as amended, being MCLA 28.101 *et seq*; MSA 3.331 *et seq*. Until July, 1974, 1935 PA 251, *supra*, required each member to contribute 5% of his monthly salary to the fund. By 1974 PA 214, amending 1935 PA 251, *supra*, the contribution requirement was terminated.

1935 PA 251, *supra*, § 3; MCLA 28.103(1); MSA 3.333(1), provides in pertinent part:

"Every member of the department of state police, who has subscribed to the constitutional oath of office, shall come under the provisions of this act. Any member of the Michigan department of public safety pension, accident, and disability fund who resigns or is dismissed for reasons other than breach of the public trust from the department of state police before having served for 10 years, shall receive in a lump sum, payable to him or his legal representative, 100% of the contributions contributed by him into the fund. . . ."

Retirement systems are purely statutory, and their administrative boards are limited in their authority to that which is provided by the legislature. OAG, 1963-1964, No 4155, p 453 (August 31, 1964). 1935 PA 251, *supra*, does not provide authority in the administrator of the fund to recover pension fund contributions. Thus, in answer to your first question, it is my opinion that the Director may not recover the contributions in question for pension fund purposes.

In response to your second question, whether the Director may deny reemployment when contributions which have been withdrawn are not repaid, again, 1935 PA 251, *supra*, includes no provision which would allow the Director to refuse to reemploy a member of the fund under these circumstances.

Const 1963, art 11, § 5 established that all employees of the state, except those specifically exempted, shall be in the classified state civil service. The Civil Service Commission is entrusted with the duty to "regulate all conditions of employment in the classified service." Const 1963, art 11, § 5. *Viculin v Department of Civil Service*, 386 Mich 375; 192 NW2d 449 (1971). Therefore, in answer to your second question, the Director may not refuse to reemploy a classified civil service employee when ordered by the Civil Service Commission to reinstate that person. There is no statutory support under 1935 PA 251, *supra*, for denial of reemployment based on the refusal to repay contributions withdrawn from the pension fund.

Your third question concerns the penalties which may be assessed against a member of the pension fund under these circumstances. 1935 PA 251, § 3, *supra*, provides that upon dismissal a member shall receive a lump sum payment of his contributions. That section also provides for the election of deferred pension benefits in certain instances. MCLA 28.103(2); MSA 3.333(2). Under that provision those members with 10 years of service credit, and who have left the department, may elect a deferred pension. However, if the contributions to the pension fund are withdrawn upon departure, such election is forfeited.

MCLA 28.103(3); MSA 3.333(3) provides that a member who qualifies for the deferred plan, who is subsequently reemployed by the Department of State Police, may again come under the provisions of the act. If the reemployed member serves for five additional years his credit for the prior service will be added and he will receive credit for the total years of service. However, if the contributions had been withdrawn, subsection 3 has no effect.

It is apparent that MCLA 28.103(3); MSA 3.333(3) is the only provision which allows a reemployed member to receive credit for prior service, consistent with the restrictions contained therein. Only if the employee had ten years of service, had not withdrawn accumulated contributions and had elected the deferred pension plan, would he receive credit for the total years of service.

Since the employee in question does not meet the qualifications outlined above, he may not receive credit for the six years of prior service at retirement. However, in light of the fact that the dismissal in this case was invalid, the trooper, at his option, may repay the contributions which were withdrawn, and receive credit for those years. If he does not choose to do so, he will accumulate only years of service from the time of reinstatement.

Your final question concerns the authority of the Director to charge interest which would have accrued to the fund if the withdrawal of contributions had not been made. An examination of 1935 PA 251, *supra*, indicates that there has been no authority delegated to the Director, as administrator of the fund, to charge interest when a former member wishes to repay contributions previously withdrawn. In the absence of a statutory provision allowing interest to be charged, the Director has no power to do so.

FRANK J. KELLEY,  
*Attorney General.*

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CONSTITUTION OF MICHIGAN: Art 3, § 2.

PROBATE JUDGES: Authority to operate and staff a juvenile detention home.

Legislative authority granting a probate judge the power to operate and staff a juvenile detention home does not violate the doctrine of separation of powers embodied in Mich Const 1963, art 3, § 2.

Opinion No. 5084

August 5, 1976.

Honorable Mark Clodfelter  
State Representative—81st District  
The Capitol  
Lansing, Michigan

You have requested my opinion on the following question:

“Does a statute which authorizes a county to establish a juvenile detention home as an agency of the probate court and which empowers the probate judge to appoint employees for such a detention home violate the separation of powers doctrine prescribed by section 2 of article 3 of the state constitution?”

The statute under consideration, 1939 PA 288, chap 12A, § 16; MCLA 712A.16; MSA 27.3178(598.16), provides in pertinent part:

“(2) Provision may be made by the board of supervisors in each