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RETIREMENT SYSTEMS: Funding of financial benefits.
CONSTITUTIONAL LAW: Funding of financial benefits arising on account of services rendered in a fiscal year.
COUNTIES: Pension funds.

Under Article IX, Sec. 24 of the Constitution of 1963, the people have imposed the duty upon a county to fund during a particular fiscal year financial benefits arising under a pension system on account of services rendered in that year.

No. 4346

December 1, 1964.

Hon. Charles N. Youngblood, Jr.
State Senator
The Capitol
Lansing, Michigan

You have requested my opinion upon the following question:

"Under the new Constitution, must a County pay only the current amount due into their pension fund, or must they include all back due amounts, too?"

In Article IX, Sec. 24 of the Michigan Constitution of 1963, the people have provided:

"The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

"Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities."

(Emphasis supplied)

The meaning and intent of Article IX, Sec. 24 of the Michigan Constitution of 1963, may be determined by examining the Constitutional Convention Debates and Address to the People. *Burdick v. Secretary of State*, 373 Mich. 578 (1964).

The Constitutional Convention first considered Article IX, Sec. 24 as Committee Proposal No. 40 and it was introduced to read as follows:

"THE ACCRUED FINANCIAL BENEFITS OF EACH PENSION PLAN AND RETIREMENT SYSTEM OF THE STATE AND ITS POLITICAL SUBDIVISIONS SHALL BE A CONTRACTUAL OBLIGATION THEREOF, WHICH SHALL NOT BE DIMINISHED OR IMPAIRED THEREBY.

"ALL SUCH BENEFITS ARISING ON ACCOUNT OF SERVICE RENDERED IN EACH FISCAL YEAR SHALL BE FUNDED DURING THAT YEAR AND SUCH FUNDING SHALL NOT BE USABLE FOR FINANCING UNFUNDED ACCRUED LIABILITIES."

Constitutional Convention 1961, Official Record Vol. I, page 770.

Mr. Brake, Chairman of the Committee on Finance and Taxation which

recommended that Committee Proposal No. 40 be included in the Constitution, submitted the following reason in support of such proposal:

"The problem here is extremely difficult. Any public system that is set up should have put into it each year sufficient money to meet all of the liability accrued during that year. If that is done from the very beginning, the system is not an excessive burden; but when you go for years without putting in enough money to cover the liability accruing each year, then to try to catch up for the past deficiency becomes a problem of magnitude. On the state level the 2 retirement systems for public school employees are pitiful examples of what results when the state simply puts in for a long period just enough money to meet the payments for retirees due each year.

"It is estimated that it would take \$424,688,598.00 to make the out-state employees' system actuarially sound and \$151,679,334.00 to make the Detroit system actuarially sound. This kind of money is not easily found. We were asked to retain in the constitution, section 23 of Article X, the constitutional guarantee of not less than 5 per cent, nor more than 7½ per cent of the payrolls from the schools' share of the sales tax. This was not done. The 7½ per cent does not even meet the liability accruing during each year, to say nothing about catching up for the past. To meet the accrued and accruing liability each year would take about 12¼ per cent of the payroll for the outstate system and 15½ per cent for the Detroit system, so instead of putting in any fixed percentage, we have provided for these 2 systems, and all others—state or municipal—a requirement that in each fiscal year the accruing liability shall be funded during that year, thus keeping any of these systems from getting farther behind than they are now.

"This is not all that ought to be done but we think it is the maximum requirement that should be written into the constitution. Fortunately many of the systems, and particularly those starting in recent years, have kept sound from the very beginning."

Constitutional Convention 1961, Official Record, Vol. I, page 770.

Delegate Van Dusen spoke in favor of the Committee Proposal and made the following observations pertinent to your question:

"Now, the second provision of this proposal deals with the financial aspects of the maintenance of pension plans. There are 2 kinds of problems in the funding of any pension plan. One is past service benefits which have not been adequately funded. And in the case of many of our public employee retirement systems, years have gone by when insufficient money has been put into the fund to take care of the future benefits which would in due course accrue to persons retiring from public employment.

"The committee recognizes that if the proposal were to tell every public employing unit right now that you must put into these funds enough to take care of all of your sins of omission in the past, this would create a financial burden on municipalities and on the state which would be overwhelming, and which would be totally disruptive to the financial picture of the state for the immediately foreseeable

future, and without any attendant real benefit to any of our citizens, including those who are participating in retirement plans. However, the committee did believe that it would be appropriate for the constitution to prescribe some ground rules so far as the future is concerned, and therefore the second paragraph of this proposal requires every public employing unit providing a pension plan or retirement system to currently fund current service benefits.

"In other words, in each year, when a certain number of employees are employed who can be expected at some future point to retire and draw upon the fund for the benefits which would be contractually theirs, in each year it will be incumbent, under this provision, upon the employing unit to put into the fund enough money to provide those benefits when they accrue. This is designed to take care of not any one specific public employees' retirement fund, of which there are many in the state, but to take care of all of them; the school employees' retirement funds, the state employees' retirement funds, the police and firemen's funds, the probate judges' retirement funds, and so on. All of the pension plans and retirement systems maintained by the state and its political subdivisions will be subject, if this proposal is adopted, to the requirement that in every year the public employer must put into the fund enough money to currently fund the benefits attendant upon service rendered by its employees in that year. This is as far as we believe we can reasonably go in mandating municipalities to do what they should have been doing for many years past, but which they have not been doing for many years past."

Constitutional Convention 1961, Official Record, Vol. I, page 771.

The Committee of the Whole approved the proposal, subject to only a minor amendment to strike out the word "such" from the first line in the second paragraph. Constitutional Convention 1961, Official Record, Vol. I, page 775.

The amendment was subsequently approved on first reading by the Convention and referred to the Committee on Style and Drafting. Constitutional Convention 1961, Official Record, Vol. I, page 778.

The Committee on Style and Drafting reported Committee Proposal No. 40 in the following form for consideration by the Convention on second reading:

"The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof[,] which shall not be diminished or impaired thereby.

"[All] FINANCIAL benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be usable for financing unfunded accrued liabilities."

Constitutional Convention 1961, Official Record, Vol. II, page 2659.

Mr. Brake, Chairman of the Committee, made the following comment concerning Committee Proposal No. 40:

"Mr. President, ladies and gentlemen of the convention, this is a new section for the constitution, and one that very greatly strengthens

the public employee retirement systems on both the state and local levels. It does 2 things: in the first paragraph, it provides that the relationship between the employing unit and the employee shall be a contractual relationship so that the municipality may not change the relationship at its will. The benefits that have accrued up to a given time are contractual and must be carried out by the municipality or by the state. The second paragraph provides that each year the system shall pay in enough money to fund the liability arising in that year. It does not require that the system catch up with all of its past liability which would be an impossibility in connection with some of the state systems, but it does require that they shall not go any further behind."

Constitutional Convention 1961, Official Record, Vol. II, page 2659.

The Committee Proposal was approved on second reading by vote of 117-1. Constitutional Convention, Official Record, Vol. II, page 2659.

The Constitutional Convention considered Article IX, Sec. 24 on third reading on May 9, 1962 and an effort was made to amend that article by striking the second paragraph entirely. This amendment was proposed by Delegate Seyferth, who offered the following pertinent explanation in support of his amendment:

"However, it is the second paragraph that concerns me. The meaning, first of all, is not clear. This is dangerous when embodied in a constitution. There are 2 interpretations of the second paragraph and they have both been handed down by actuaries. First of all, does it mean that current retirement benefits only are to be funded each year or does it mean that the plan must be fully funded currently each year starting when the constitution is adopted? This latter viewpoint is the one that was expressed in the finance and taxation committee and, as I recall rather specifically, it was the intention of the finance and taxation committee to comply with the second interpretation: that which means that the fund must be currently funded fully each year starting with the acceptance of the constitution."

Constitutional Convention 1961, Official Record, Vol. II, page 3184.

Mr. Brake responded to this effort to amend Article IX, Sec. 24 by making the following observation:

"There is only one interpretation, I think, of which this second paragraph is capable; namely, we are saying to the retirement systems of the state and of the local units: you must put into that fund this year the liability, an amount to cover the liability, that accrues this year. Now some of the state systems have been doing that. They are sound and up to date. The worst offenders have been the outstate and the Detroit public school employees' systems. They are woefully behind and, as Mr. Seyferth has just said, it would take something near \$600 million to bring them up to date, make them actuarially sound. That is out of the question. There is no possibility of getting it done. But year after year, for more than a quarter of a century, the policy that has been followed nearly all the time has been to put into those funds just about enough to pay what you have to take

out that same year. In other words, you meet your payments. And there is no danger but what those payments will always be made even if we were to continue to follow that policy. But it isn't decent. We are simply accumulating debts that our children are going to have to pay. All we ask is that you don't get any farther behind than you are now. This is a method of borrowing money and the state isn't the only one that has used it. We have got some municipalities—some of you read the Detroit papers—year after year instead of raising taxes to pay the bills, they refuse to put into the fund the amount necessary to carry it along and in that way borrow money against the future. I think this year they have done something about it. The state has been doing the same thing.”

Constitutional Convention 1961, Official Record, Vol. II, page 3184.

Delegate Madar spoke in opposition to the amendment and stated:

“To be very brief, Mr. President, I certainly go along with what Mr. Brake and what Mr. Austin said. I serve now on the Detroit system as a member of the board of trustees and I realize how necessary it is to fund these pensions currently. I certainly hope that you will defeat this amendment.”

Constitutional Convention 1961, Official Record, Vol. II, page 3184.

The amendment was not adopted. Constitutional Convention 1961, Official Record, Vol. II, page 3184.

Article IX was approved on third reading by vote of 90-36. Constitutional Convention 1961, Official Record, Vol. II, page 3186.

In the Address to the People, page 91, the delegates to the Constitutional Convention advised the people as follows:

“This is a new section which requires that accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions be a contractual obligation which cannot be diminished or impaired by the action of its officials or governing body. It provides further protection for those covered by such pension and retirement plans by requiring that benefits arising on account of service rendered in each year be funded during that year. Such funding shall not be used for financing unfunded accrued liabilities.

“The section is an attempt to rectify, in part, policies which have permitted sizeable deficiencies to pile up in retirement systems in this state. Under this section, accruing liability in each fiscal year must be funded during that year, thus keeping any of these systems from getting farther behind than they are now.”

Constitutional Convention 1961, Official Record, Vol. II, page 3402.

This recitation of the Constitutional Convention Debates and Address to the People requires the conclusion that the intent and meaning of Article IX, Sec. 24 is to command the funding of financial benefits arising on account of service rendered in each fiscal year to be funded during that year. The Constitution does not impose an obligation upon a county to pay into a pension system all amounts that are unfunded.

Therefore, it is the opinion of the Attorney General that Article IX,

Sec. 24 requires a county to pay into its pension fund such amounts as are necessary to fund financial benefits which arise on account of service rendered in that fiscal year.

FRANK J. KELLEY,
Attorney General.

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DOG LAW: License.

County is excluded from selling dog licenses to residents of City of Lansing, which has its own ordinance providing for sale of licenses in accord with the state dog law.

No. 4353

December 1, 1964.

Mr. Leo A. Farhat
Ingham County Prosecuting Attorney
County Building
Lansing, Michigan

You have asked my opinion on the effect of the dog ordinance of the City of Lansing upon the right and duty of the county to sell dog licenses in the City of Lansing, under the provisions of the dog law of 1919, Act 339, P.A. 1919, as amended.¹

Section 30 of the 1919 dog law provides in pertinent part as follows:

"All cities in this state having a population of 250,000 or more, according to the latest . . . decennial census . . . and townships having an ordinance or ordinances regulating the licensing of dogs, payment of claims and providing for the enforcement of such ordinances, with the exception of the provisions of sections 10, 10a and 11 of this act, are hereby excepted from the other provisions of this act. Any city . . . in a county of 150,000 population or more . . . shall be authorized by action of the city . . . governing body to adopt an ordinance or ordinances regulating the licensing of dogs, payment of claims and providing for the enforcement of such ordinances. . . ."²

You state that the City of Lansing had in 1960 a population of 113,058 and the County of Ingham a population of 211,296 according to the 1960 federal census. You point out that the City of Lansing therefore does not fall within the cities expressly excepted from all provisions of the 1919 dog law except Sections 10, 10a and 11, as set forth in the first quoted sentence of Section 30, since the city does not have a population of 250,000.

You further point out that the population of Ingham County exceeds 150,000, so that any city in the county, including the City of Lansing, may adopt a dog ordinance as provided by the second quoted sentence of Section 30.

Finally, you point out that the City of Lansing has adopted a dog

¹ C.L. '48 and C.L.S. '61 §§ 287.261 *et seq.*; M.S.A. 1958 Rev. Vol. 1963 Cum. Supp. §§ 12.511 *et seq.*

² C.L.S. '61 § 287.290; M.S.A. 1963 Cum. Supp. § 12.541.