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RETIREMENT AND PENSIONS: Public school employees' retirement system.

Compensation for services rendered under the Chapter 2 retirement system may be used to compute a member's final average compensation under Chapter 1.

A member of the Chapter 1 retirement system may now receive credit for up to 15 years of out-of-system service in addition to credit received for service performed under Chapter 2.

Military service, although creditable by the Chapter 2 retirement system, may not be included as part of the total Chapter 2 service eligible for credit under Chapter 1.

Except for service rendered under Chapter 2, a public school employee must work at least five years as a member of the Chapter 1 retirement system before receiving credit for out-of-system service. With again the exception of Chapter 2 service, a public school employee now may not be credited with more out-of-system service than service actually performed as a member of the Chapter 1 retirement system.

A Chapter 1 member may obtain credit for out-of-system service performed at a juvenile training school operated by any county in the United States.

A person who is presently a member of an optional retirement program created under 1967 PA 156 may not combine the service acquired under that program with previous Chapter 1 service for eligibility to purchase out-of-system service towards Chapter I retirement benefits.

A person may combine service performed under a 1967 PA 156 optional retirement program with his or her years of Chapter 1 service to become eligible, at age 55, to retire and draw a retirement allowance from Chapter 1. That person must first, however, retire from his university employment before drawing a retirement allowance from Chapter 1.

Opinion No. 5030 November 5, 1976.

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You have requested my opinion on several questions concerning the Public School Employees Retirement Act, 1945 PA 136, Ch I; MCLA 38.201 *et seq;* MSA 15.893(1) *et seq.* Your questions will be answered seriatim:

1. MCLA 38.215b(b); MSA 15.893(15b)(b) permits a Chapter 1 (outstate) member to bring in all of his or her Chapter 2 (Detroit) service, even though it might exceed the 15 year limitation of MCLA 38.216b; MSA 15.893(16b). Does this authorize the Retirement System to use wages earned under Chapter 2 to arrive at the member's final average compensation?

1945 PA 136, Ch I, *supra,* created the so-called "Chapter 1" or "outstate" retirement system for all public school employees other than those employed by a school district of the first class. 1945 PA 136, Ch II; MCLA 38.301 *et seq;* MSA 15.893(41) *et seq,* created the so-called "Chapter 2" or "Detroit" retirement system for all employees of a school district of the first class. The only first class school district has been the Detroit School District.

These two retirement systems have operated independently over the years. However, with the passage of 1974 PA 244, the legislature began the process of completely merging Chapter 2 into the Chapter 1 retirement system. The major step towards full merger made by 1974 PA 244 was to vest the administration of both systems in the Public School Employees Retirement Board, which had previously administered only the Chapter 1 system.

Among its other amendments to 1945 PA 136, *supra,* 1974 PA 244 added the following language to MCLA 38.215b(b); MSA 15.893(15b)(b):

> ". . . A member shall not be allowed to use more out-of-system service than service performed under this chapter unless, prior to July 1, 1974, the member has applied for out-of-system service credit based upon payment of contributions therefor as required under section 16b of this chapter, in which case the total out-of-system service credited shall be used to compute his pension if the minimum service requirements performed under this chapter are met.
>
> "This limitation of 15 years and the 5-year service requirement under section 16b shall not apply to out-of-system service acquired under chapter 2, as amended, and as a state employee under Act No. 240 of the Public Acts of 1943, as amended, if the member relinquishes all rights to retirement under Act No. 240 of the Public Acts of 1943, as amended, and chapter 2, as amended.
>
> "*Credit for service performed under chapter 2 of this act,* as amended, and as a state employee under Act No. 240 of the Public Acts of 1943, as amended, *shall be on the same basis for eligibility, in all respects, for any form of retirement provided in this chapter as if the service was performed under this chapter.*" (emphasis added)

For retirement under Chapter 1, the legislature has obviously granted special status to service rendered while a member of Chapter 2. The legislature clearly intends to erase gradually the distinctions separating the two systems.

A member's "final average compensation" is essential to the determination of his or her retirement allowance. For example, a "plan 2" member (i.e., one who will receive social security) retiring now is entitled to an allowance equal to 1½% of his or her "final average compensation" multiplied by his or her years of service.[1] MCLA 38.215b(b); MSA

[1] For members who are not entitled to receive social security on account of Chapter 1 service, MCLA 38.215a; MSA 15.893(15a) provides "plan 1" benefits. MCLA 38.215a; MSA 15.893(15a) was amended by 1974 PA 244 to add the identical language that was added, and quoted above, to MCLA 38.215b; MSA

15.893(15b)(b). The term "final average compensation" is defined, for the purposes of 1945 PA 136, *supra,* by MCLA 38.201(p); MSA 15.893(1)(p), which, in pertinent part, provides:

> " 'Final average compensation' means the average of a member's compensations earned within a 5-consecutive year period in which his compensations were highest. If the 5-year period, which would otherwise be used, is interrupted for unpaid absence due to the member's own personal illness or accident, or leave for educational purposes, final average compensation shall be determined by dividing the compensations actually earned during such 5-year period by the years and fractions of a year to the nearest tenth of a year for which they were paid."

This definition must be read in conjunction with MCLA 38.201(q); MSA 15.893(1)(q), which defines "compensation" as:

> ". . . the remuneration earned *by a member for service performed by him as a Michigan public school employee. . . .*" (emphasis added)

So that "final average compensation" may be determined, members, therefore, must have at least 5 consecutive years of Chapter 1 service before they retire. This requirement, however, has presented no true problem in the past for persons seeking service credit for non-Chapter 1 service. Although MCLA 38.216b; MSA 15.893(16b) allows a member to obtain credit for specified "out-of-system service," it requires that they first have at least 5 years of Chapter 1 service subsequent to that out-of-system service.

The 5 year service requirement of MCLA 38.216b; MSA 15.893(16b) has now, however, been waived for the Chapter 2 service of those members relinquishing all retirement rights under Chapter 2. MCLA 38.215b(b); MSA 15.893(15b)(b). A person, thus, may be eligible for a retirement allowance under Chapter 1 without having 5 years of actual Chapter 1 service. You, therefore, ask whether the Chapter 2 compensation may be used to compute his or her "final average compensation" under Chapter 1.

As noted earlier, the legislature has begun erasing the distinctions between Chapters 1 and 2. Indeed, the legislature has directed in MCLA 38.215b(b); MSA 15.893(15b)(b) that service performed as an employee under Chapter 2:

> ". . . shall be on the same basis for eligibility, in all respects, for any form of retirement provided in this chapter as if the service was performed under this chapter."

Although the above language does not deal precisely with the problem raised in your question, the language does evidence a strong legislative intent that Chapter 2 service, once rights under that system are relinquished, is to be treated "as if the service was performed" under Chapter 1 in computing retirement allowances. Moreover, the legislature has waived the requirement that a member render 5 years of Chapter 1 service to receive

15.893(15b). Thus, the conclusions reached in this opinion concerning "plan 2" members are equally applicable to "plan 1" members.

credit for service performed under Chapter 2; 5 years of service are, of course, necessary to determine final average compensation. It is, therefore, my opinion that compensation for services rendered under Chapter 2 may be used to compute a member's final average compensation.

2. May a member acquire up to 15 years of out-of-system service in addition to service rendered under Chapter 2 towards retirement under Chapter 1?

A member of the retirement system may obtain service credit towards retirement benefits for "out-of-system service." MCLA 38.216b; MSA 15.893(16b). The member must first, however, pay into the system the contribution he or she would have made had the service actually been performed under Chapter 1, and also perform 5 years of Chapter 1 service.

The term "out-of-system service" is defined for the purpose of 1945 PA 136, *supra,* by MCLA 38.201(m); MSA 15.893(1)(m), which provides:

> " 'Out-of-system service' means service[2] performed in other states in the United States or its territorial possessions, the public schools of the school district of the city of Detroit, the university of Michigan, Michigan state university, Wayne state university, Grand Valley state colleges, Oakland university, Saginaw valley college, a juvenile training school operated by a county, and as a state employee . . . and service under section 14b of this chapter. . . ."

Of direct concern to you is the additional restriction of MCLA 38.215b(b); MSA 15.893(15b)(b) that a member "shall not be allowed to use more than 15 years of out-of-system service."

As noted earlier, the legislature has now begun merging Chapter 2 into Chapter 1. MCLA 38.215b; MSA 15.893(15b)(b), as amended by 1974 PA 244, now, in pertinent part, provides:

> "This limitation of 15 years and the 5-year service requirement under section 16b shall not apply to out-of-system service acquired under chapter 2. . . ."

Thus, retirement credit for service rendered under Chapter 2 may be acquired without regard to the 15 year limitation of MCLA 38.215b(b); MSA 15.893(15b)(b).

It is, therefore, my opinion that a member may now receive credit for up to 15 years of out-of-system service in addition to credit received for service performed under Chapter 2.

3. May military service, creditable by Chapter 2, be included as part of the total Chapter 2 out-of-system service eligible for credit under Chapter 1?

A member of the Chapter 1 retirement system may, as dictated by MCLA 38.214; MSA 15.893(14), receive retirement credit for military service. In pertinent part, MCLA 38.214; MSA 15.893(14) provides:

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[2] MCLA 38.201(j); MSA 15.893(1)(j) defines "service" as "personal service performed as a public school employee. . . . The board shall allow credit as out-of-system service for service performed in other states if similar service performed in Michigan would be creditable . . . ."

"A member of this retirement system who was or shall be drafted, enlisted, inducted, or commissioned into military, naval, marine or other armed service of the United States government during time of war or emergency, or who shall be drafted or called into such armed service or emergency during time of peace, and within 24 months from the date of his honorable discharge or relief from active duty from such armed service shall resume employment as a public school employee, shall receive a maximum of 6 years of credit, except required service extending beyond 6 years, for time spent in such armed service credited to him as a member of the retirement system. . . ."

This provision was examined by the Court of Appeals in *Curtis* v *Michigan Public School Employees Retirement System*, 10 Mich App 508; 159 NW2d 889 (1968). As I explained in a July 3, 1973 letter opinion to you:

". . . Curtis was a member of the Michigan Public School Employees Retirement System under Chap. 1 and sought to obtain credit for 38 months served in the military during World War II while he was on leave from the Indianapolis, Indiana school system. The court ruled that the Legislature expressly did not provide for military service credit while employed by an out of state school system, concluding that the member seeking military credit must have been a member of the Michigan Public School Employees Retirement System when he left for military service. It should be observed that at the time the Michigan Court of Appeals decided *Curtis*, section 14 of Chap. 1 of the Public School Employees Retirement Act, *supra*, specified that a 'member of the retirement system who was or shall be drafted, enlisted or inducted' shall receive military service credit. After the decision in *Curtis*, the legislature amended the statute to permit military service credit only to a 'member of *this* retirement system who shall be drafted, enlisted, inducted, . . .' (Emphasis added.) Thus, the legislature has manifested a clear intent to provide military service credit only to members of the Chap. 1 system if they went into military service as members of such system."

MCLA 38.214; MSA 15.893(14) has not been amended since the date of that letter opinion.

The letter opinion concerned your question whether a Chapter 1 member could receive out-of-system service credit for military service which was performed while on leave from Michigan State University. The opinion concluded that a member of the Chapter 1 system:

". . . may receive out of system service credit for service performed at Michigan State University, provided that such service shall not be creditable toward retirement if the member is or will be receiving retirement allowance from Michigaan State University for the same years of service. A member may receive credit for military service performed only if he was a member of the Chap. 1 retirement system when he entered military service. Thus, the member may not receive credit for military service performed while he was on military leave from Michigan State University under section 14 of Chap. 1 of the Michigan Public School Employees Retirement Act, *supra*. . . ."

As discussed at length earlier, the legislature has begun, with the passage of 1974 PA 244, a gradual process of merging Chapter 2 into the Chapter 1 retirement system. As part of that process, MCLA 38.215b(b); MSA 15.893(15b)(b) was amended by 1974 PA 244 to read, in pertinent part, as follows:

> "This limitation of 15 years and the 5-year service requirement under section 16b shall not apply to out-of-system service acquired under chapter 2, as amended, and as a state employee under Act No. 240 of the Public Acts of 1943, as amended, if the member relinquishes all rights to retirement under Act No. 240 of the Public Acts of 1943, as amended, and chapter 2, as amended.
>
> "Credit for service performed under chapter 2 of this act, as amended, and as a state employee under Act No. 240 of the Public Acts of 1943, as amended, shall be on the same basis for eligibility, in all respects, for any form of retirement provided in this chapter as if the service was performed under this chapter."

You ask whether, as a result of that language, military service immediately preceded and followed by Chapter 2 service might qualify for service credit under Chapter 1.

MCLA 38.215(b); MSA 15.893(15b)(b) speaks only of "service performed under chapter 2 of this act." Military service, although creditable by the Chapter 2 system, obviously is not "service performed under chapter 2." MCLA 38.215b(b); MSA 15.893(15b)(b), thus, does not authorize the grant of credit for military service rendered while on leave from the Chapter 2 retirement system.

The question remains, however, whether Chapter 2 service may be treated as a Chapter 1 service for the purpose of meeting the requirement of MCLA 38.214; MSA 15.893(14) that, to earn credit for military service, one must have left (and later returned to) Chapter 1 service to enter the military.

MCLA 38.215b(b); MSA 15.893(15b)(b) does speak, of course, in terms of treating Chapter 2 service "as if the service was performed under this chapter." The words of a statute must, however, be considered in their context. *In re Atherton's Estate,* 333 Mich 193; 52 NW2d 660 (1952). MCLA 38.215b(b); MSA 15.893(15b)(b) simply directs that Chapter 2 service ". . . shall be on the same basis for eligibility, in all respects, *for any form of retirement* provided in this chapter as if the service was performed under this chapter." (emphasis added) Chapter 2 service may be used, as if it was performed under Chapter 1, towards "any form of retirement" granted by Chapter 1.[3] No other use is specified. Service credit for

[3] Some of the forms of retirement offered by Chapter 1 are: disability retirement allowances, which require at least 10 years of Chapter 1 service, MCLA 38.216; MSA 15.893(16); a widow or dependent husband allowance, if the deceased member had acquired 15 years of Chapter 1 service credit, MCLA 38.220(c); MSA 15.893(20)(c); and a straight life retirement allowance based upon 30 or more years of credited service "of which at least 15 years were served as a Michigan public school employee" and attaining 55 years of age, MCLA 38.215; MSA 15.893(15).

time spent in the military, while undoubtedly a benefit of Chapter 1, is not a "form of retirement."

It is, therefore, my opinion that military service, which was immediately preceded and followed by Chapter 2 service, may not be included as part of the total Chapter 2 service eligible for credit under Chapter 1. The legislature may well, as the merger of the two systems is completed, grant Chapter 1 service credit for such military service. It has not, however, done so yet.

4. A Mrs. V served as a public school employee in Wisconsin for 9 years. She then was a member of the Chapter 1 system for 11 years. Subsequently, she was employed for 20 years under Chapter 2. She would now prefer to receive a single retirement allowance from Chapter 1. How long must she return to Chapter 1 service to be eligible to receive credit for her Chapter 2 service?

Eligibility for Chapter 1 service credit based upon out-of-system service is dictated by MCLA 38.216b; MSA 15.893(16b), which, in pertinent part, provides:

> "Except as otherwise provided in this chapter a member shall not be entitled to a pension under any section of this chapter based upon out-of-system service performed within this state until he has contributed to the retirement system created under this chapter an amount equal to the amount he would have contributed according to the schedule governing contributions in effect at the time of that service, had the service been performed under this retirement system, together with simple interest at such rate as the retirement board shall determine from time to time on each annual contribution, respectively, to the date the member came under the provisions of this chapter and makes full payment of the amount and interest and has 5 years of service in this state under this chapter following the out-of-system service. . . ."

For plan 2 members relinquishing all rights to retirement under Chapter 2, MCLA 38.215b(b); MSA 15.893(15b)(b) now mandates that "the 5-year service requirement under section 16b shall not apply to out-of-system service acquired under chapter 2." To become eligible for credit for Chapter 2 service, a person need only, therefore, enter Chapter 1 service for the period necessary to earn "membership credit" under the retirement system, or, in other words, become a member of Chapter 1. However, the Chapter 1 service should be bona fide and not contrived for the purpose of improving a person's retirement benefits.

You report that the Chapter 1 system computes service credit in units of one-tenth of a legal school year. Since, as mandated by MCLA 38.201(j); MSA 15.893(1)(j), "[n]ot less than 150 days shall constitute a school year," the smallest unit of Chapter 1 service is 15 days of work.

It, therefore, appears that Mrs. V should return to a Chapter 1 school district for at least 15 days (3 weeks) of actual, bona fide service as a public school employee in order to be eligible to receive credit for her Chapter 2 service. To actually earn the service credit, Mrs. V must, as

mandated by MCLA 38.216b; MSA 15.893(16b), pay into Chapter 1, with interest, "an amount equal to the amount [s]he would have contributed according to the schedule governing contributions in effect at the time of that service." She must also agree to relinquish her rights to any pension from Chapter 2. MCLA 38.215b(b); MSA 15.893(15b)(b).

5. Mr. D served as a public school employee for 7 years in Ohio. He next worked as a teacher under Chapter 2 from 1950 to 1975. Since the start of the 1975 school year, he has been employed by a school district covered by Chapter 1. How long must he be a member of Chapter 1 to purchase and receive credit for his 7 years of Ohio service?

Since Mr. D is already eligible to receive credit for his Chapter 2 service, to be credited for this service, he must relinquish his rights to a Chapter 2 pension, and pay the amount required by MCLA 38.216b; MSA 15.893(16b).

Mr. D's 7 years of Ohio service are, however, another matter. Undoubtedly, his time as a public service employee in Ohio constitutes "out-of-system service," as defined by MCLA 38.201(m); MSA 15.893(1)(m).[4] As "out-of-system service," Mr. D's Ohio service may be credited towards retirement under Chapter 1. MCLA 38.216b; MSA 15.893(16b). He must first, of course, pay into the Chapter 1 system the contribution he would have made had the service actually been performed under Chapter 1, and render:

> ". . . 5 years of service in this state under this chapter following the out-of-system service. . . ."

MCLA 38.215(b); MSA 15.893(15b)(b), as amended by 1974 PA 244, now provides, for plan 2 members, that "the 5-year service requirement under section 16b shall not apply to out-of-system service acquired under chapter 2 . . . and as a state employee." No other exemptions from the 5 year service requirements are made by MCLA 38.215b(b); MSA 15.893(15b)(b). Since the express mention in a statute of one thing implies the exclusion of other similar things, *Sebewaing Industries, Inc* v *Village of Sebewaing,* 337 Mich 530; 60 NW2d 444 (1953), it is clear that the 5 year service requirement still applies to out-of-system service acquired in other states.

Again, the question arises whether Chapter 2 service, under the language of MCLA 38.215b(b); MSA 15.893(15b)(b), may be used to meet a Chapter 1 service requirement. That provision, to reiterate, speaks of treating Chapter 2 service "as if the service was performed under this chapter." That special status extends, however, only towards "any form of retirement" granted by Chapter 1. While credit for out-of-system service performed in another state is clearly a benefit of Chapter 1, it, just like military service credit, is not a "form of retirement."

It is, therefore, my opinion that Mr. D must work at least 5 years as a member of Chapter 1 before he may receive any credit for his out-of-system service in Ohio.

[4] See also, MCLA 38.201(j); MSA 15.893(1)(j).

A further restriction is imposed upon Mr. D by MCLA 38.215b(b); MSA 15.893(15b)(b), which, in pertinent part, provides:

> ". . . A member shall not be allowed to use more out-of-system service than service performed under this chapter unless, prior to July 1, 1974, the member has applied for out-of-system service credit based upon payment of contributions therefore as required under section 16b of this chapter, in which case the total out-of-system service credited shall be used to compute his pension if the minimum service requirements performed under this chapter are met."

Mr. D must, therefore, work at least 7 years under Chapter 1 in order to be eligible to receive credit for all 7 years of his Ohio service.

6. A member may obtain credit for out-of-system service performed at a juvenile training school operated by a county. Does the county training school have to be in Michigan, or may it be anywhere in the United States?

To repeat, a member may obtain, pursuant to MCLA 38.216b; MSA 15.893(16b), credit towards retirement for "out-of-system service." What constitutes "out-of-system service" is dictated by MCLA 38.201(m); MSA 15.893(1)(m), which, in pertinent part, provides:

> " 'Out-of-system service' means service performed in other states in the United States or its territorial possessions, the public schools of the school district of the city of Detroit, the university of Michigan, Michigan state university, Wayne state university, Grand Valley state colleges, Oakland university, Saginaw valley college, a juvenile training school operated by a county, and as a state employee under . . . sections 38.1 to 38.43 of the Michigan Compiled Laws, and service [as a teacher or administrator at an overseas United States government public school for Americans] under section 14b of this chapter. . . ."

Retirement credit may, therefore, be obtained for service performed at "a juvenile training school operated by a county." The statute does not mandate that the training school be operated by "a Michigan county," just "a county." In light of the careful detail used elsewhere in MCLA 38.201(m); MSA 15.893(1)(m) to describe which out-of-system service is creditable (for example, service at "the university of Michigan, or "as a state employee under . . . sections 38.1 to 38.43 of the Michigan Compiled Laws"), that omission is most significant.

It is, therefore, my opinion that a Chapter 1 member may obtain credit for out-of-system service at a juvenile training school operated by a county anywhere in the United States.

7. May a person who is presently a member of a 1967 PA 156 optional retirement program combine service acquired under that program with service previously performed under Chapter 1 to purchase out-of-system service towards retirement under Chapter 1?

The boards of control of several state institutions of higher education were empowered by 1967 PA 156; MCLA 38.381 *et seq;* MSA 15.895(1) *et seq,* to create an "optional retirement program" for their faculty and

administrative staff.[5] The boards of control, under the "optional retirement program," provide for the purchase of annuity contracts providing retirement and death benefits to the participating employees.

At the commencement of a 1967 PA 156 optional retirement program, an eligible university employee, then a member of the Michigan Public School Employees Retirement System,[6] could elect either to join the optional program, or to remain in the retirement system. MCLA 38.385; MSA 15.895(5). Anyone who thereafter becomes an eligible employee may elect either the optional program or the retirement system.

A faculty member or administrator who left the Michigan Public School Employees Retirement System by electing to participate in an optional retirement program at its commencement is, pursuant to MCLA 38.386(1); MSA 15.895(6)(1):

> ". . . deemed to be a limited member of the retirement system for the purpose of determining his eligibility for rights and benefits in the retirement system. His continued service with a state supported institution of higher education while under the optional retirement program is deemed to be member service in the retirement system for the purpose of determining his eligibility for retirement benefits dependent upon a specified period of total service or upon attainment of a specified age while in service."

If such an employee continues his or her limited membership in the Michigan Public School Employees Retirement System and becomes eligible to retire:

> ". . . the basis for computation of his retirement benefits under the retirement system after his election to participate in the optional retirement program shall be all of the following:
>
> "(a) The credited service as of the time of making the election.
>
> "(b) The average of his annual compensation for those 5 consecutive years before the time of making the election which produces the highest amount, or, the average of his annual compensation before the time of making the election if his total credited service is less than 5 years."
>
> MCLA 38.386(3); MSA 15.895(6)(3)

Your problem arises due to a change in the law effected by 1974 PA 244. As added by 1974 PA 244; MCLA 38.215b(b); MSA 15.893(15b)(b) now, in pertinent part, provides:

> ". . . A member shall not be allowed to use more out-of-system service than service performed under this chapter unless, prior to July 1, 1974, the member has applied for out-of-system service credit based upon payment of contributions therefor as required under

[5] The state institutions of higher education so empowered were Western Michigan, Eastern Michigan, Northern Michigan, Central Michigan, Michigan Technological Universities, and Ferris State College. MCLA 38.382(d); MSA 15.892(2)(d).

[6] The formal title for the Chapter 1 system.

section 16b of this chapter, in which case the total out-of-system service credited shall be used to compute his pension if the minimum service requirements performed under this chapter are met."

In particular, you cite the example of a "limited member" who had acquired 7 years of service credit under Chapter 1 prior to becoming a university faculty member and electing an optional retirement program in 1970. Earlier, he had worked for 10 years as a public school employee in Illinois. He now seeks to bring in all of his Illinois service for Chapter 1 service credit. You ask whether he may bring in only 7 years of Illinois service, or, by using his service in the optional retirement program, may he bring in all 10 years of that out-of-system service.

First, it is clear that, unless there is statutory authorization for treating service in the optional retirement program as "service performed under this chapter," MCLA 38.215b(b); MSA 15.893(15b)(b) would allow the "limited member" to bring in only 7 years of out-of-system service, i.e., the amount of his actual Chapter 1 service.

As noted earlier, a person who left Chapter 1 to participate in an optional retirement program at its commencement retains a "limited membership" in Chapter 1. Specifically, MCLA 38.386(1); MSA 15.895(6)(1) provides:

> ". . . continued service with a state supported institution of higher education while under the optional retirement program is deemed to be member service in the retirement system *for the purpose of determining his eligibility for retirement benefits dependent upon a specified period of total service or upon attainment of a specified age while in service.*" (emphasis added)

It is, at once, apparent that service rendered under an optional retirement program has only limited applicability to Chapter 1. The service may be used as "member service" to acquire *eligibility* for those "retirement benefits dependent upon a specified period of total service or upon attainment of a specified age while in service." Such service may not be used to increase retirement benefits under Chapter 1.

No other Chapter 1 use for optional retirement program service is specified in MCLA 38.386; MSA 15.895(6). This forecloses using the optional program service to acquire out-of-system service under MCLA 38.215b(b); MSA 15.893(15b)(b), since MCLA 38.386(4); MSA 15.985(6)(4) dictates that:

> "An eligible employee electing to participate in the optional retirement program, and his beneficiaries, is not entitled to a right or benefit under the retirement system other than to the extent the rights and benefits are expressly provided for in this section."

It is, therefore, my opinion that a person who is presently a member of an optional retirement program created under 1967 PA 156, *supra,* may not combine the service acquired under that program with his or her previous Chapter 1 service for eligibility to purchase out-of-system service towards Chapter 1 retirement benefits. Thus, in your example, the member may bring in only 7 years of out-of-system service.

8. Dr. H has been a member for 6 years of a university's optional retirement program. Immediately prior to that time, Dr. H acquired 23 years of service credit under Chapter 1. May Dr. H, who retains a limited membership with Chapter 1, start to draw a retirement allowance from Chapter 1 at age 55?

Eligibility for retirement under Chapter 1 is dictated by MCLA 38.215; MSA 15.893(15) which, in pertinent part, provides:

> "A member or person who (1) has attained or *attains age 55 years, and has 30 or more years of credited service as defined under this chapter of which at least 15 years were served as a Michigan public school employee* or (2) has attained or attains age 60 years and has accumulated 10 or more years of credited service as a Michigan public school employee and is no longer working as a Michigan public school employee, or in any other capacity for which out-of-system credit performed in this state is allowed by this chapter, shall upon written application to the retirement board be entitled to a retirement allowance provided for in section 15a of this chapter, if he is a plan 1 member, or as provided in section 15b of this chapter, if he is a plan 2 member." (emphasis added)

As indicated, an individual may retire and draw a retirement allowance from Chapter 1 when he or she attains age 55 and has accumulated 30 or more years of service credited under Chapter 1.

The faculty member or administrator who left the Chapter 1 retirement system by electing to participate in a university's 1967 PA 156 optional retirement program at its commencement, pursuant to MCLA 38.386(1); MSA 15.895(6)(1):

> ". . . deemed to be a limited member of the retirement system for the purpose of determining his eligibility for rights and benefits in the retirement system. His continued service with a state supported institution of higher education while under the optional retirement program is deemed to be member service in the retirement system for the purpose of determining his eligibility for retirement benefits dependent upon a specified period of total service or upon attainment of a specified age while in service."

Service performed under the optional program is, thus, deemed "member service" under Chapter 1 for acquiring "eligibility for retirement benefits dependent upon a specified period of total service or upon attainment of a specified age while in service."

The eligibility requirements imposed by MCLA 38.215; MSA 15.893(15) for retirement benefits are, of course, that an individual have "a specified period of total service" and the "attainment of a specified age." Clearly, service rendered under the optional retirement program may, thus, be used to determine a "limited member's" eligibility for retirement under the terms of MCLA 38.215; MSA 15.893(15).

It is, therefore, my opinion that Dr. H may combine 7 years of service under a 1967 PA 156 optional retirement program with him 23 years of Chapter 1 service credit to become eligible, at age 55, to retire and draw a

retirement allowance from Chapter 1. The basis for the computation of his retirement benefits is described in MCLA 38.386(3); MSA 15.895(6)(3).

It should be emphasized, however, that Dr. H must first retire from his university employment before he may draw a retirement allowance from Chapter 1. MCLA 38.215; MSA 15.893(15).

FRANK J. KELLEY,
Attorney General.

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MARRIED WOMEN: Creditworthiness.

CIVIL RIGHTS: Equal credit opportunity act.

A married woman may bind her separate estate for necessities as well as luxuries.

A creditor who refuses to extend credit or refuses to grant a loan to a woman because of the fact that she is married is in violation of the Federal Equal Credit Opportunity Act as well as 1974 PA 246, since, under Michigan law, a married woman's individual property is subject to levy in payment of her individual debts.

Opinion No. 5037 November 8, 1976.

Hon. Gary M. Owen
State Representative
Capitol Building
Lansing, Michigan

You have requested an opinion clarifying the relationship between the federal Equal Credit Opportunity Act 15 USC 1691 (1974) and Michigan law relative to the contractual status of married women. Restated, the question may be posed as follows:

> Under Michigan law, may a creditor refuse to extend credit to a married woman who wishes to individually contract for necessities or luxuries?

The federal Equal Credit Opportunity Act which took effect on October 28, 1975 provides in pertinent part:

15 USC 1691.

"(a) It shall be unlawful for any creditor to discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction.

"(b) An inquiry of marital status shall not constitute discrimination for purposes of this title [15 USCS §§ 1691-1691e] if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit, and not to discriminate in a determination of creditworthiness.