



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

October 24, 1977

FILE NO. S-1304

PENSIONS:

State Employee May Not
Receive Refund of Pension
Payments Upon Switching
From One Job to Another

Michael L. Mory
Executive Secretary
State Employees' Retirement
System of Illinois
1201 South Fifth Street
Springfield, Illinois 62706

Dear Mr. Mory:

You recently asked about the possibility of denying refund of a State employee's pension contributions under the Illinois Pension Code if the employee, shortly after leaving State employment, obtains another job also covered by the State Employees' Retirement System. You state that your past administrative practice has been to require at least a

Michael L. Mory - 2.

one-day break in employment before making a refund, and to refuse a refund if the applicant has already obtained another job covered by the System.

Since Article 14 of the Pension Code is to be revised and its sections renumbered by Public Act 80-841, effective January 1, 1978, this opinion will cite both the old and the new provisions. Section 14-168(a) of the Code (Ill. Rev. Stat. 1975, ch. 108 1/2, par. 168(a)) provides as follows:

"(a) Upon withdrawal a member is entitled to receive, upon written request, a refund of his contributions, including credits granted him while in receipt of disability benefits, without interest. The board, in its discretion may withhold payment of a member's contributions for not to exceed 1 year after he has ceased to be an employee.

* * *

New section 14-130 of the Code is virtually the same. The term "withdrawal" in turn, is defined in section 14-129 of the Code (Ill. Rev. Stat. 1975, ch. 108 1/2, par. 14-129) as:

"* * * Complete severance of employment of a member as an employee of the State or of all Departments, by resignation, discharge or dismissal."

Michael L. Mory - 3.

New section 14-103.26 is not substantially different. Furthermore, section 14-176 (Ill. Rev. Stat. 1975, ch. 108 1/2, par. 14-176) (identical with new section 14-135.03) authorizes the Board of Trustees of the State Employees' Retirement System "[t]o establish rules and regulations and formulate policy for proper operation of the system and transaction of its business; * * *".

Given these statutory provisions, I am of the opinion that the Board of Trustees of the State Employees' Retirement System is authorized to adopt reasonable rules and regulations for determining the conditions under which an employee has made a complete severance of employment and that the past practice you have described in this regard is reasonable.

Section 14-107 of the Code (Ill. Rev. Stat. 1975, ch. 108 1/2, par. 14-107) (new section 14-103.04) defines the word "department" to include practically every agency of the State except entities covered by the State Universities Retirement System. Thus the meaning of section 14-129 is clear: In order to withdraw from the System one must completely

Michael L. Mory - 4.

sever employment with the State, or at least with all "Departments", meaning essentially all entities covered by the State Employees' Retirement System. A person who leaves a job in one State agency on one day and starts working in another the next working day, or who at the time of applying for a refund has already obtained other employment covered by the State Employees' Retirement System, clearly has not completely severed employment covered by the System.

The new Article 14 set forth in Public Act 80-841 will further clarify the meaning of "withdrawal". The new section 14-130(a) defines "withdrawal" as follows:

" * * *
For purposes of this Section, a member will be considered to have withdrawn from service if a change in, or transfer of, his position results in his becoming ineligible for continued membership in this System and eligible for membership in another public retirement system under this Act.
* * * "

This definition, when effective, will not require a change in your present practice.

Very truly yours,

A T T O R N E Y G E N E R A L