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OPINION NUMBER 02-0082

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92-A-2-(g)
92-A-2-(l)
Art. X, §29

RETIREMENT - State Employees
RETIREMENT - Teachers

Retirement Systems cannot diminish retirement benefits,
including DROP Accounts.

Ms. Glenda T. Chambers
Executive Director
Louisiana State Employees'
Retirement System
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Baton Rouge, LA 70804

Mr. James P. Hadley, Jr.
Director
Teachers' Retirement System
of Louisiana
P. O. Box 94123
Baton Rouge, LA 70804

Dear Ms. Chambers and Mr. Hadley:

You jointly requested the opinion of this office concerning whether the Louisiana State Employees' Retirement System ("LASERS") and the Teachers' Retirement System of Louisiana ("TRSL") have the authority to debit the Deferred Retirement Option Plan ("DROP") accounts administered by LASERS and TRSL.

As you advised, the DROP plan for LASERS was established at R.S. 11:447, et seq. and at R.S. 11:786, et seq. for TRSL. R.S. 11:446(A)(5) provides that the members of LASERS who have not participated in DROP have an option to choose an Initial Benefit Option ("IBO"), which if elected shall be placed in an account in accordance with R.S. 11:449. R.S. 11:783(A) establishes an "Initial Lump-Sum Benefit" in TRSL similar to LASERS' IBO and provides that, if elected, the funds shall be placed in an account in accordance with R.S. 11:788.

R.S. 11:448 provides in pertinent part as follows:

A. Upon the effective date of commencement of participation in the plan and during the period of participation in the plan, membership in the retirement system shall cease and **the participant shall be considered by the system to be in a retired status**. During this period, neither the employee or employer contributions shall be payable.

R.S. 11:449(C) provides as follows:

Interest shall not be credited to a participant's subaccount during the period of participation. **Amounts** which remain credited to the individual's subaccount after termination of participation in the plan **shall be credited** with interest at the end of each plan year **at a rate equal to the realized return on the system's portfolio** for that plan year as certified by the system actuary in his actuarial report, less one-half of one percent. (Emphasis added).

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The language of R.S. 11:788(C) is substantially the same as R.S. 11:449(C).

Your question is whether the systems can credit the participants' subaccounts with a negative interest rate (i.e., debit the account) when the realized return is insufficient to offset the one-half of one percent maintenance fee or the realized return is a negative percentage?

The answer to your question must be in the negative. The participants's subaccounts are retirement benefits. La.Const. Art. X, Sec. 29(E) states in pertinent part as follows:

The accrued benefits of members of any state or statewide public retirement system shall not be **diminished** or impaired. (Emphasis added)

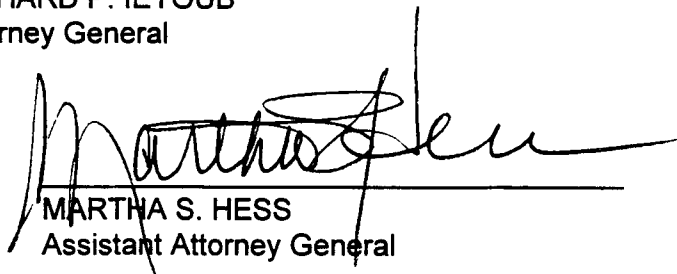
Thus the systems are prohibited from taking action which would cause the accrued benefits of the members of the system to be diminished. We are of the opinion that debiting the account because the realized return is insufficient to offset the maintenance fee or because the realized return is a negative percentage would diminish the accrued benefits of members of the systems.

Trusting this adequately responds to your request, we remain

Yours very truly,

RICHARD P. IEYOUNG
Attorney General

BY:


MARTHA S. HESS
Assistant Attorney General

RPI/MSH