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Secretary Richard L. Stalder
Department of Public Safety and Corrections
P. O. Box 84304, Capitol Station
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92-A-2 (g) RETIREMENT – State Employees
LSA-R.S. 11:441, LSA-R.S. 11:601 through 606

LSA-R.S. 11:602(A) was intended to provide a retirement option for Public Safety Employees in addition to those provided in LSA-R.S. 11:441. LSA-R.S. 11:602(A) was not intended to provide the exclusive retirement option available to Public Safety Employees.

Reference is made to your request for an Attorney General's Opinion regarding the interpretation of LSA-R.S. 11:601 through 606, which provisions of law were enacted by Act No. 746 ("Act 746") of the 2001 Regular Legislative Session. Act 746 created a new "retirement component" within the Louisiana State Employees' Retirement System ("LASERS") for "wardens, correctional officers, probation and parole officers, and security personnel who are employed by the Department of Public Safety and Corrections" ("Public Safety Employees"). Pertinently, LSA-R.S. 11:601 through 606 provide as follows:

"11:601. Application; definitions

A. (1) There is hereby created a retirement component for public safety services which is a component of the Louisiana State Employees' Retirement System.

(a) The provisions of Chapter 1 of Subtitle II of Title 11 of the Louisiana Revised Statutes of 1950, excluding this Subpart, shall be referred to as the "primary component".

(b) The provisions of this Subpart shall be referred to as the "secondary component".

(2) Notwithstanding any other provisions of law to the contrary, and specifically the provisions of the primary component, the retirement of public safety services employees shall be governed by the provisions of the secondary component provided that, with respect to matters not specifically covered by the provisions of the secondary component, the applicable provisions of the primary component shall prevail.

B. For purposes of the secondary component, the words "member" or "members" shall mean wardens, correctional officers, probation and parole officers, and security personnel who are employed by the Department of Public Safety and Corrections and who are or who upon enrollment as an employee would be members of the primary component, but shall not

include any other members of the primary component or members of any retirement system to which the state makes contributions.”

“11:602. Eligibility for membership

A. A member shall be eligible for retirement if he has attained at least twenty-five years of service credit, regardless of age.” (Emphasis added).

LSA-R.S. 11:441 sets forth, among other things, the general retirement options available to the general membership of LASERS, as well as certain special provisions applicable to certain Public Safety Employees. Pertinently, LSA-R.S. 11:441 provides for member eligibility for retirement after thirty years of service at any age, after twenty-five years or more of service at age fifty-five, and after ten years or more of service at age sixty or thereafter.

It is our understanding that prior to the enactment of Act 746, LSA-R.S. 11:441’s general retirement eligibility provisions, as well as its special provisions for Public Safety Employees, were considered to be retirement options available to eligible Public Safety Employees. However, since the enactment of Act 746 you advise that Public Safety Employees are considered by LASERS to be ineligible for retirement under the general retirement provisions. According to your correspondence, LASERS interprets the provisions of LSA-R.S. 11:602 as “...providing an entirely separate retirement component for [Public Safety Employees], that precludes their eligibility for retirement...as provided in accordance with R.S. 11:441...”.

Clearly, you take issue with LASERS interpretation of LSA-R.S. 11:602. It is your contention that the retirement eligibility provisions provided by LSA-R.S. 11:602 were intended to provide an additional retirement option for Public Safety Employees, not the exclusive retirement option available to Public Safety Employees. Your letter states:

“...this interpretation makes logical sense. To construe that the provisions of the “secondary component” operate to the exclusion of the “primary component” would lead to situations which were unintended. For instance, if a corrections officer and a clerical staff person are both hired at age 55, the staff person will be eligible for retirement at age sixty-five, after only ten years of service. The corrections officer, however, will not reach retirement age until age 80. This disparity is not what I believe was intended by the enactment of Section 601 *et seq.*”

We have examined Chapter 1 of Subtitle II of Title 11 of the Louisiana Revised Statutes of 1950, which provisions of law provide for LASERS. Our review indicates that the Legislature has historically adopted retirement provisions for the benefit of the employees of the Department of Public Safety and Corrections which are favorable to those adopted for the benefit of the general membership of LASERS. See: LSA-R.S.

11:441D & E; 11:444A(2), 11:450B, 11:461B(2) and 11:478. We are unaware of any provision of law which imposes more restrictive retirement provisions upon Public Safety Employees than those imposed upon LASERS general membership, and it is our opinion that the provisions of Act 746 were not intended to impose more restrictive retirement provisions upon Public Safety Employees either. It is, therefore, our opinion that LSA-R.S. 11:602(A) was intended to provide a retirement option for Public Safety Employees in addition to the retirement options provided in LSA-R.S. 11:441. LSA-R.S. 11:602(A) was not intended to provide the exclusive retirement available to Public Safety Employees.

In reaching this determination we were guided by the following rules of statutory construction: Words and phrases shall be read with their context and shall be construed according to the common and approved usage of language. **LSA-R.S. 1.3.** When the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law. **LSA-C.C. Art. 10.** Laws on the same subject matter must be interpreted in reference to each other. **LSA-C.C. 13.** Meaning and intent of law is determined by consideration of the law in its entirety and consideration of all other laws on the same subject matter, and a construction should be placed upon the provision in question which is consistent with the express terms of the law and with the obvious intent of the lawmaker in enacting it. **Stogner v. Stogner**, 739 So.2d 762 (La. 1999). A construction of a statute which creates an inconsistency should be avoided when a reasonable interpretation can be adopted which will not do violence to the plain words of the act and carry out the intention of the legislative body. **City of New Orleans v. Board of Sup'rs Of Elections for Parish of Orleans**, 43 So.2d 237 (La. 1950). In the interpretation of laws the general system of legislation adopted upon a particular subject should be considered; derogation, in a particular provision, from the common rule should not be presumed unless the intention to derogate is clear and beyond reasonable doubt. **Childers v. Johnson**, 6 La. Ann. 634 (1831).

In spite of our opinion in this regard, we are compelled to note that our interpretation of the above referenced statutory provisions is not necessarily binding upon the Louisiana State Employees' Retirement System. It is our understanding that LASERS has expressed concerns about your interpretation of Act 746, in that the costs to the retirement system if your interpretation of Act 746 were to be adopted would be quite high. We are not actuaries, and are therefore not in a position to assess the financial ramifications of Act 746, or its impact upon the actuarial value of the retirement system.

In conclusion, it is the opinion of this office that LSA-R.S. 11:602(A) was intended to provide a retirement option for Public Safety Employees in addition to those provided in LSA-R.S. 11:441. LSA-R.S. 11:602(A) was not intended to provide the exclusive retirement option available to Public Safety Employees.

We trust the foregoing to be of assistance. Please do not hesitate to contact this office if we can be of assistance in other areas of the law.

Yours very truly,

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BY:



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