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DEPARTMENT OF JUSTICE
CIVIL DIVISION
BATON ROUGE
70804-9005

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Mr. Cecil J. Picard
State Superintendent of Education
Department of Education
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92-A-2(g) RETIREMENT – State Employees
90-A-2 PUBLIC FUNDS – Loan, Pledge or Grants
La. Const. Art. VII, Sec. 14
LSA-R.S. 11:423

In accordance with LSA-R.S. 11:423, Department of Education may not pay the interest accrued on and attributable to employee's portion of contributions necessary for employee to receive prior service retirement credit.

Mr. Frank H. Perez, General Counsel
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Gentlemen:

This office is in receipt of Mr. Picard's request, as supplemented by Mr. Perez's correspondence, regarding the purchase of prior service retirement credit for Ms. Carolyn Jones, who was formerly employed by the Department of Education ("DOE") and is currently employed by the Department of Health and Hospitals ("DHH").

Mr. Picard has advised that as a result of an administrative error on the part of DOE, Ms. Jones did not receive service credit with the Louisiana State Employees' Retirement System ("LASERS") for her period of employment with DOE. Ms. Jones and DOE now seek to redress this problem and purchase the appropriate amount of prior service credit on Ms. Jones behalf. However, a question has arisen as to what cost associated with the repurchase should be borne by Ms. Jones, and what costs should be borne by DOE.

In this regard, Mr. Picard has directed our attention to LSA-R.S. 11:423, which provides as follows:

"State service for which credit has not been received due to administrative error

A. Notwithstanding any other provision of law to the contrary, but in accordance with applicable laws relative to determining whether such state service is or was creditable, any person who was denied membership in the system for any state employment rendered in a position that should have made membership mandatory as a condition of

employment, but was not so enrolled due to an administrative error on the part of the agency where so employed, shall be entitled to receive service credit for the period denied.

B. The appointing authority or personnel officer of the agency wherein the service was performed shall certify the inclusive dates of employment, the base pay and earned compensation of the employee during the period, whether the employment was full-time or part-time, whether the employment was performed on a job appointment, interment or emergency basis, and the reason the member was not enrolled in the system at the time of employment.

C. State service previously denied to the member and deemed as creditable by the board may be purchased, provided application is filed with the retirement system as outlined in Subsection B of this Section. In addition, ***the member shall pay into the system an amount equal to the current employee contributions based on the member's earned compensation at the time the service was performed, plus compound interest at the current board-approved actuarial valuation rate from date of service until paid, and the employing agency where such service was denied (or its successor agency) shall pay into the system an amount equal to the greater of actuarial cost to the system of any additional retirement benefits payable as a result of the receipt of service credit as authorized by this Section or the sum of the employer contributions which would have been due plus interest thereon at the board-approved actuarial valuation rate, minus the amount to be paid by the member.*** No service credit shall be allowed until both the employee and employer have paid in full and prior to retirement the amounts described above." (Emphasis added).

Based upon the provisions of LSA-R.S. 11:423, Mr. Picard questions whether DOE can pay, on Ms. Jones' behalf, the portion of the interest charges that LSA-R.S. 11:423 states that "the member shall pay". According to Mr. Picard, it is DOE's position that since LSA-R.S. 11:423 states that the employee shall pay compound interest on the member's earned compensation, any payment of the interest accrued on the employee's portion of the payment would amount to a donation in violation of La. Const. Art. VII, Sec. 14.

On the other hand, Mr. Perez asserts DHH's position that in addition to payment of the employer's portion of contributions and accrued interest, a state agency should be able to pay, on its employee's behalf, the employee's portion of accrued interest. It is Mr. Perez's position that the payment of the employee's interest portion is in compliance with La. Const. Art. VII, Sec. 14(B), which provides, in pertinent part, that "Nothing in this Section shall prevent...(2) contributions of public funds to pension and insurance programs for the benefit of public employees."

Attorney General's Opinion No 92-485, with respect to payment of an employee's prior service retirement credit contributions by a school board, determined that pursuant to statutory authorization, a School Board could pay the employer's portion of additional retirement 'time' for prior creditable years service. That opinion also determined that the School Board could not pay the employee's portion, as same would constitute an unconstitutional donation of public funds. Pertinently, that opinion provides:

"Contributions of public funds to pension and insurance programs for the benefit of public employees, however, must be specifically authorized by law, and must be made in payment of some legal obligation. See **City of Port Allen v. Louisiana Municipal Risk Management Agency, Inc.**, 439 So.2d 399 (La. 1983). While the employer's portion of the "retirement" contribution is authorized by law and made pursuant to a legal obligation, there is no authority for the employer to pay the employee's portion of the contribution. An employer doing so would violate Article VII, Sec. 14(A). Therefore, payment by the School Board of its portion of the retirement contribution does not violate this Article; however, the School Board may not lawfully pay the employee's portion." (See also: Attorney General's Opinions Nos. 02-13, 00-375, 98-183, 92-485, 80-83).

In light of the directory language of LSA-R.S. 11:423, which requires payment of interest accrued on the employee's portion of contributions by the employee, the Department of Education may not pay the interest accrued on and attributable to Ms. Jones' portion of contributions necessary for her to receive prior service retirement credit. In accordance with Attorney General's Opinion No. 92-485 and the prior opinions of this office cited herein, it is the opinion of this office that any payment of the interest accrued on an employee's portion of the payment by the Department of Education to LASERS would amount to a donation in violation of LA. Const. Art. VII, Sec. 14.

We trust the foregoing to adequately respond to your request.

Yours very truly,

RICHARD P. IEYOUNG
Attorney General

BY: 
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