

February 2, 2005
Opinion Number 04-0042

Mr. Patrick J. Butler, Jr., President
Board of Commissioners
New Orleans City Park Improvement Association
1 Palm Drive
New Orleans, Louisiana 70124-4608

LSA-R.S. 42:808
92-A-2-(g) RETIREMENT – State Employees
54 INSURANCE

Pertains to the eligibility of New Orleans City Park Improvement Association employees to continue health coverage through the Office of Group Benefits after retirement.

Dear Mr. Butler:

Reference is made to the request of Mr. D. Digges Morgan III for an opinion of this office regarding the eligibility of certain retirees of the New Orleans City Park Improvement Association (the “Association”) to maintain health insurance coverage with the State of Louisiana’s Office of Group Benefits after retirement. Specifically, you seek our opinion as to whether social security benefits constitute “retirement benefits from an approved state or governmental agency defined benefit plan” such that Association employees who are currently covered by the Office of Group Benefits and who are participants in Social Security will be eligible to maintain that coverage into their retirement.

LSA-R.S. 42:808, relative to eligibility for Office of Group Benefits programs, pertinently provides:

“A. For the purposes of participating in life, health, or other programs sponsored by the Office of Group Benefits, an employee is defined as:

- (1) A classified or unclassified state civil service employee.
- (2) A retiree as defined by the rules and regulations of the Office of Group Benefits...”

In accordance with the rules and regulations of the Office of Group Benefits:

“Retiree means an individual, who was a covered Employee immediately prior to the date of retirement and who, upon retirement,

1. immediately received retirement benefits from an approved state or governmental agency defined plan; or, ...”

In connection with your request Ms. Pamela Miller Perkins, General Counsel to the Division of Administration, has provided us with a Memo dated July 14, 2004 from Mr. Stanley K. Hurder, Deputy General Counsel to the Office of Group Benefits, regarding the very issue which is the subject of your request. A copy of Ms. Perkins' correspondence, also dated July 14, 2004, and the Memo provided are enclosed herewith. Pertinently, Ms. Perkins correspondence states:

"At this time the Office of Group Benefits has not adopted extensive rules to define retirement eligibility. It is anticipated that either legislation or additional rules and regulations may be adopted to clarify the definition of eligible retiree, which might exclude individuals who receive a Social Security benefit...However, at this time it appears that the employees of the New Orleans City Park Improvement Association are probably eligible to continue coverage into retirement status."

In pertinent part, Mr. Hurder's Memo states:

"...the Social Security Administration appears to be a "governmental agency defined plan". Payments to the retiree are defined in accordance with prior earnings records, just like the standard LASERS or other state plan. OGB has not developed a list of approved plans, so in this narrow set of circumstances, it appears that the SSA Social Security benefits plan constitutes a governmental agency defined plan. The rule requires that the active employee immediately receive the retirement benefits following retirement. Thus, the employee could not retire and continue coverage unless he or she is immediately eligible for Social Security benefits."

In summary, Mr. Hurder's Memo states:

"...Association employees are state employees eligible for OGB membership. This eligibility for retiree coverage provided the person retires directly from active employment to the Social Security governmental agency defined benefit plan."

The Memo also quotes from a letter dated September 20, 2001 (copy enclosed), wherein Mr. A. Kip Wall, Chief Executive Officer of the Office of Group Benefits stated:

"If Social Security is considered to be the approved governmental agency defined benefits plan, then the employees of New Orleans City Park must be covered immediately prior to retirement and must, upon retirement, immediately begin receiving Social Security benefits. Any other scenario will not meet the definition."

This office concurs in the analysis and result reached in the documents enclosed herewith, particularly Mr. Hurder's Memo of July 14, 2004. Accordingly, it is the opinion of this office that Association employees who are currently covered by the Office of Group Benefits, and who are participants in Social Security will be eligible to maintain Group Benefits coverage into their retirement provided the employee retires directly from active employment with the Association and immediately begins receiving the benefits of Social Security.

In reaching our determination herein, we have deferred to the Office of Group Benefits and its Counsel with respect to the interpretation of the Office of Group Benefits' rules and regulations. In accordance with the doctrine of contemporaneous construction, the interpretation given to a law or regulation by those charged with its execution and/or implementation is entitled to great weight. ***Esso Standard Oil Co. v. Crescent River Port Pilot's Association***, 106 So.2d 316 (La. 1958); ***State v. B. P. Exploration and Oil, Inc.***, 506 So.2d 528 (La. App. 1st. Cir. 1997); ***Danna v. Commissioner of Insurance***, 228 So.2d 708 (La. App. 1st. Cir 1969).

We trust the foregoing to be of assistance. Please contact this office if you have any comments or questions in this regard.

Yours very truly,

CHARLES C. FOTI, JR.
Attorney General

BY: _____
JEANNE-MARIE ZERINGUE BARHAM
Assistant Attorney General

CCF, jr./JMZB/dam

Attachments

xc: A. Kip Wall, Office of Group Benefits
Pamela Miller Perkins, Division of Administration
Stanley K. Hurder, Office of Group Benefits

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Syllabus

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Date Received:

Date Released: February 2, 2005

Jeanne-Marie Zeringue Barham
Assistant Attorney General