



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

OCT 02 2013
OPINION 13-0057

92-A-2-(j) - RETIREMENT - Municipal Police Employees; Harbor Police

26 U.S.C. § 72 29 U.S.C. § 1001, *et seq.*

A retirement system is not prohibited from interpreting the phrase "attained age" in accordance with the Internal Revenue Service for the purposes of distribution of a police officer's pension.

R. Randall Roche
General Counsel
Municipal Police Employees
Retirement System
7722 Office Park Blvd Ste. 200
Baton Rouge, Louisiana 70809

Dear Mr. Roche:

Our office received your request for an attorney general opinion on behalf of the Board of Trustees of the Municipal Police Employees' Retirement System ("MPERS") regarding complications arising out of the transfer of the City of Baton Rouge/Parish of East Baton Rouge police officers ("police officers") from the City of Baton Rouge/Parish of East Baton Rouge Employees' Retirement System ("CPERS") to the MPERS. A question has arisen concerning the interpretation of the term "attained age" for purposes of participation in the Deferred Retirement Option Plan ("DROP") by these police officers. Specifically, you have asked whether a member can complete the DROP period and receive a lump sum payment, as opposed to a yearly annuity, if he or she completes the DROP period in the calendar year of their fiftieth birthday.

You indicate that MPERS and CPERS have different interpretations of the term "attained age" for DROP purposes.¹ You further indicate that MPERS interprets the term "attained age" within its statutory framework to mean a person that has reached the birth date of the appropriate age. On the other hand, according to the CPERS retirement system coordinator, CPERS interprets the term "attained age" for DROP purposes as reaching the calendar year in which the employee would reach the appropriate age.

¹ Members of these retirement systems must meet the years of service or the age requirements of the respective systems to be eligible to retire and to begin DROP. A member would be eligible for participation in the CPERS DROP with 25 to 30 years of creditable service at any age or at least 10 years of creditable service and having reached the age of 55 years. See the CPERS Ordinance, Title 1, Chapter 3, Part IV (the "CPERS Ordinance"), Section 1:271(B)(1) of Subpart 2. A member qualifies for participation in the MPERS DROP with at least 12 years of creditable service and attainment of the age of 55 years or at least 20 years of creditable service and being eligible to receive a service retirement allowance. See La. R.S. 11:2221(A).

Such a conflict is at issue, according to your letter, because the police officers were transferred from CPERS to MPERS in February of 2000. Under the CPERS ordinance, the maximum period for a member participating in DROP would be five years.² The MPERS DROP period is only up to three years in duration.³ In connection with this transfer, these police officers would continue to receive the more expansive CPERS retirement benefits, including the longer DROP period.⁴

Police officers who are qualified by length of service and attained age may elect to participate in the CPERS DROP for up to two years on its terms and then enter the MPERS DROP on its terms. At the completion of their time in DROP, a police officer is entitled to receive his DROP funds. How these funds are distributed at the conclusion of DROP participation is at the heart of the issue presented. Currently if a police officer, who begins DROP participation at age 44 (will turn 45 in December) completes the maximum five years in DROP, he will be required to take a yearly annuity as opposed to a lump sum for his time in MPERS DROP. That same police officer would be able to get a lump sum from CPERS for the time he was in the CPERS DROP. The different payment methods are based on the different interpretations of "attained age" between CPERS and MPERS. Of course, there is nothing that would prevent a police officer from delaying his or her entry into DROP in order to satisfy both systems' eligibility criteria and receiving a lump sum payment from each system upon the conclusion of his or her participation in DROP.

While this office does not issue opinions on interpretations of federal laws and regulations, we note that you reference in your letter certain penalty provisions of the Internal Revenue Code.⁵ You indicated that the Internal Revenue Service ("IRS") considers a retiree to have reached an "attained age" for the purposes of determining whether the tax penalty applies to early pension withdrawals, when he or she retires at any time during the calendar year of his or her fiftieth birthday.⁶

There is nothing within the MPERS statutes that would prevent MPERS from using the same definition for "attained age" as CPERS and the IRS. Yet, MPERS' current interpretation of "attained age" is not in violation of any law. Both CPERS and MPERS

² See Section 1.271(B)(5) of subpart 2 of the CPERS Ordinance. A member retiring with between 25 and 30 years of creditable service may participate in the CPERS DROP for a maximum of 5 years or "a number of years which, when added to the number of years of creditable service for which the member has credit in this pension plan equals thirty-two (32)." CPERS Ordinance, Section 1:271(B)(5). A member who retires with at least 10 years of creditable service who has reached the age of 55 years may participate in DROP for a maximum of 3 years. *Id.*

³ See La. R.S. 11:2221(C).

⁴ See CPERS Ordinance, Section 1:285 of Subpart 4.

⁵ The Internal Revenue Code generally imposes a ten percent penalty on retirement distributions made from retirement plans before the retiree attains the age of fifty-five. See 26 U.S.C. §72(t)(2)(A)(v). An exception to this general rule allows for early distributions of retirement benefits to employees "of a State or political subdivision of a State who provides police protection, firefighting services, or emergency medical services," as a "public safety employee," who have separated from service after having attained the age of fifty. See 26 U.S.C. §72(t)(10)(A).

⁶ See IRS notices 2007-7 and 2007-5 IRB (1/10/2007).

interpretations of "attained age," although different, in our opinion are valid exercises of each governing board's authority and would seem to protect a member from tax penalties associated with an early retirement.

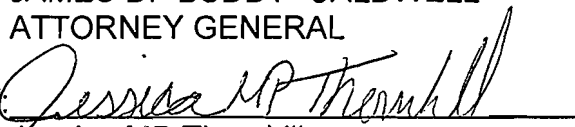
In conclusion, it is possible for MPERS and CPERS to use different definitions of the term "attained age" for the same purpose. Consistency in interpretations would simplify the options available to these particular police officers, but is not required by state or federal law, in our opinion. As a consequence, it is the opinion of this office that neither system can be compelled to alter its interpretation absent some judicial intervention. At any rate, the police officers should be made aware of their options and of the consequences of their choices under the current interpretations of the dual systems.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY:



Jessica MP Thornhill
Assistant Attorney General

JDC: JMPT