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DEPARTMENT OF JUSTICE
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OPINION 13-0098

Mr. John F. Young, Jr.
Jefferson Parish President
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90-A-1 PUBLIC FUNDS & CONTRACTS
La. R.S. 11:1946

State law does not authorize Jefferson Parish to directly pay the employee contributions due to the Parochial Employees' Retirement System of Louisiana. However, the Parish is not prohibited from increasing an employee's salary in an amount that is equal to the employee's retirement contribution.

Dear Mr. Young:

You have requested an opinion of this office regarding whether it is legal for Jefferson Parish ("Parish") to pay the employee contribution due to the Parochial Employees' Retirement System of Louisiana ("PERS") for employees hired on or before 1986.

In 1980 and 1986, the Parish Council, pursuant to its authority under the Jefferson Parish Home Rule Charter, passed resolutions which provided that the Parish would pay the full retirement contributions for employees hired on or before 1986. To accomplish this, a Parish employee's check is increased and the required contribution rate is then deducted from the employee's payroll check and credited to PERS.

Jefferson Parish employees are members of Plan A of PERS. La. R.S. 11:1946 provides that, "[e]ach member of Plan A shall contribute an amount equal to a percentage of his earnings from each and every payment of earnings, which contributions shall be credited to annuity savings fund A."¹ You ask whether having the Parish pay the employee portion violates La. R.S. 11:1946 insofar as it provides that "each member" shall make the employee contribution to PERS.

A review of the statutes governing PERS did not reveal any express authority for an employer to pay any or all of an employee's contribution to PERS. This differs from the following statutes which expressly grant certain employers the option to pay the employee contribution to a public retirement system:

La. R.S. 11:2174(3)(b) authorizes employers of employees covered by the Sheriffs' Pension and Relief Fund to pay employee contributions and provides, in pertinent part,

¹ Employee contributions to PERS, as well as all state and statewide public retirement systems, must be made at a rate set forth in La. R.S. 11:62. La. R.S. 11:62(8)(a) provides that employees in Plan A of PERS shall be at "not less than 8% nor more than 11%, as determined by the board of trustees in consultation with the actuary for the system." The current employee contribution rate for Plan A is 9.5%.

that "each sheriff, including the criminal and civil sheriff for the parish of Orleans, in his sole discretion, may, upon written notice to the Sheriffs' Pension and Relief Fund, fifteen days prior to the beginning of a calendar quarter, elect that the entire contribution required under Subparagraph (3)(a) shall be an employer contribution."

La. R.S. 11:1481(b)(1) allows employers contributing to the Louisiana Assessors' Retirement Fund to pay the employee contribution rate in addition to the employer contribution. The statute provides, in pertinent part, "in addition to the amounts required to be paid by the employer, upon providing written notice to the Assessors' Retirement Fund at least fifteen days prior to the beginning of a calendar year, each assessor may elect to pay all or any portion of the contributions required in Subparagraph (a) of this Paragraph of the assessor and the assessor's employees who are eligible for membership in the fund." *Id.*

La. R.S. 11:1562(C) authorizes employers who are members of the Louisiana Clerks' of Court Retirement Fund to pay all or a portion of the employee contributions due to the Fund. The statute provides, in pertinent part, that "in lieu of deducting the employee contribution from the salary of each clerk, deputy, and employee" an employer "may elect to pay out of the clerk's or board's operating funds all or any portion of the employee contributions which would otherwise be deducted from the salary of each clerk, deputy, and employee." *Id.*

Finally, La. R.S. 11:1865-1868 provide the cities of Monroe, Port Allen, Kenner and Slidell with express authority to pay the employee contributions due to the Municipal Employees' Retirement System of Louisiana from municipal funds which would otherwise be deducted from employee earnings.

Because Jefferson Parish is not statutorily authorized to pay employee portions due to PERS directly to the retirement system, we must conclude that they cannot do so. However, our research revealed no prohibition against the Parish giving employees a permanent raise in the amount of the employee contribution. We reached a similar conclusion in La. Atty. Gen. Op. No. 04-0161, which addressed whether the Town of Sunset could pay both the employee and employer portions due to the Municipal Employees' Retirement System of Louisiana on behalf of the Town's elected officials. The opinion stated as follows:

Our research revealed no legislation specifically authorizing the Town of Sunset to pay employee retirement contributions on behalf of its elected officials; however, our research did not reveal any legislation which would specifically prohibit a municipality from providing compensation to its elected officials in the form of payments of the employee's portion of their retirement contributions, in lieu of or in addition to cash compensation. Although such an arrangement would be unusual, it would not necessarily be illegal.

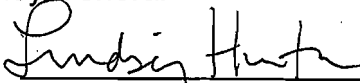
The conclusion in La. Atty. Gen. Op. No. 04-0161 was premised on the employee contribution being paid to the employee as additional compensation for his employment and not directly to the retirement system.

Based on the foregoing, it is the opinion of this office that state law does not authorize Jefferson Parish to directly pay the employee contributions due to PERS. However, the Parish is not prohibited from increasing employees' salaries in an amount that is equal to the employee retirement contribution. Finally, we note that the decision to pay the employee contribution for only certain employees cannot be made in an arbitrary or discriminatory manner. We call your attention to La. Atty. Gen. Op. No. 02-0300, which addresses the potential problems associated with paying different amounts for different employees.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

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