



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

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

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OPINION 15-0112

Steven S. Stockstill
Executive Director
Firefighters' Retirement System
3100 Brentwood Drive
Baton Rouge, LA 70809

77 - OFFICERS - Local & Municipal; Selection,
Qualifications & Tenure; vacancies
77 - A - STATE OFFICERS - Selection, Qualifications &
Tenure; Vacancies

La. R.S. 42:3.2

La. R.S. 11:2251
La. R.S. 11:2260

The term limitations set forth in La. R.S. 42:3.2 for boards and commissions in the executive branch of state government do not apply to members of the board of trustees for the Firefighters' Retirement System.

Dear Mr. Stockstill:

Our office received your request for an opinion concerning the application of La. R.S. 42:3.2, which concerns the limitation of terms of members of boards and commissions, to the Board of Trustees for the Firefighters' Retirement System ("FRS").¹

As background, you relay that FRS is a statewide retirement system established to provide retirement benefits to firemen employed by any municipality, parish, or fire protection district of the State of Louisiana.² The Board of Trustees for FRS is composed of ten members, whose qualifications are provided for by La. R.S. 11:2260.

As noted in your request, La. R.S. 42:3.2 places a limitation on the terms of members of certain boards and commissions, providing:

A.(1)(a) Notwithstanding any provision of law to the contrary, no person appointed or elected to a board or commission within the executive branch of state government who has served for more than two and one-half terms in three consecutive terms shall be elected or appointed to the succeeding term, unless another term limit is provided by law.

(b) Notwithstanding any provision of law to the contrary, no person appointed to a board or commission within the executive branch of state government serving at the pleasure of an appointing authority shall serve more than twelve consecutive years.

¹ Another request was received concerning the application of La. R.S. 42:3.2 to the board of trustees for Municipal Police Employees' Retirement System. Such request was designated 15-0076 and reaches a similar conclusion as this opinion.

² See La. R.S. 11:2251 *et seq.*

(2)(a) Notwithstanding any provision of law to the contrary, no person who has served as a member of any one or more boards or commissions in the executive branch of state government for two and one-half terms in three consecutive terms combined shall serve as a member of any board or commission in the executive branch of state government for a period of at least two years after the completion of such consecutive terms of service.

(b) Notwithstanding any provision of law to the contrary, no person who has served as a member of any one or more boards or commissions in the executive branch of state government for twelve consecutive years combined shall serve as a member of any board or commission in the executive branch of state government for a period of at least two years after the completion of such twelve consecutive years of service.

B. The provisions of this Section shall not apply to any person serving on a board or commission within the executive branch of state government on August 15, 2008, except that it shall apply to any term of service of any such person that begins after August 15, 2008, and it shall apply to service of any such person at the pleasure of an appointing authority pursuant to an appointment that is made after August 15, 2008.

C. The provisions of this Section shall not prohibit any person from serving as a member of a board or commission if such membership is by virtue of another office to which he is elected or appointed.

La. R.S. 42:3.2 provides limitations on service for members of boards and commissions "in the executive branch of state government." Thus, the threshold inquiry is whether the Board of Trustees for FRS is a board or commission "in the executive branch of state government."

FRS is one of nine statewide retirement systems.³ FRS was created pursuant to La. R.S. 11:2251, which provides:

A. A retirement system is hereby established and placed under the management of the board of trustees for the purpose of providing retirement allowances and other benefits under the provisions of this Chapter for firemen employed by any municipality, parish, or fire protection district of the state of Louisiana. The retirement system so created shall be established as of January 1, 1980.

B. It shall have the power and the privileges of a corporation and shall be known as the "Firefighters' Retirement System" and by such name all of its business shall be transacted, all of its funds invested, and all of its cash, securities, and other property held.

³ Title 11 of Louisiana's Revised Statutes provide for "Consolidated Public Retirement Systems." This title contains four subtitles: I. General and Preliminary Provisions; II. State Systems; III. Statewide Systems; and IV. Municipal and Parish Systems.

FRS is a retirement system created with "the power and privileges of a corporation" for the purpose of providing retirement benefits for firemen employed by a municipality, parish or fire protection district. The legislature did not designate it as a state agency in its enabling legislation.⁴ When considering the purpose, function and governance, it is apparent FRS has a municipal, rather than state, focus. An "employee," as used in the statutes relating to administration of the retirement system, is a full time firefighter or someone holding a position, as defined in the municipal fire and police civil service system, and who is employed by a fire department of any municipality, parish or fire protection district of the State of Louisiana.⁵ An "employer" is defined as any municipality, parish, or fire protection district in the state of Louisiana, except Orleans and Lafayette parishes, which employ a full-time fireman, and the FRS.⁶ The majority of the members that make up the board of trustees are qualified based on holding an office or employment on a local, rather than state, level.⁷

Further, La. R.S. 36:4 describes the structure of the executive branch of state government, directing that certain agencies of the executive branch of state government be placed within the departments enumerated in the statute. Legislation placing FRS in the Department of Treasury was repealed in 1991.⁸ We find no current legislation placing FRS in the executive branch of state government or classifying it as a state agency.

In La. Atty. Gen. Op. No. 05-0456, our office considered whether FRS was an "agency" for purposes of property control by the Division of Administration and concluded the Division lacked jurisdiction over FRS for purposes of state property control laws. Likewise, in La. Atty. Gen. Op. No. 96-351, we concluded FRS was not required to be included in the State's Comprehensive Annual Financial Report. Such a conclusion is consistent with the court's view of FRS and Municipal Employees' Retirement System, another statewide retirement system for municipal employees, in the matter of *Firefighters' Retirement System, et al v. Eisneramper, LLP, et al.*, wherein the court

⁴ Compare, for example, the enabling legislation of this statewide retirement system to the enabling legislation of Louisiana State Employees' Retirement System, which is a state system: "[t]he system established by R.S. 11:401 shall be a state agency and shall have the power and privileges of a corporation." (Emphasis added).

⁵ La. R.S. 11:2252(10).

⁶ La. R.S. 11:2252(11).

⁷ See La. R.S. 11:2260(A)(2). We note that only four of the ten members of the FRS board of trustees lack qualifications based on holding employment or office with a municipality, parish or fire protection district, and are rather designated as board members by virtue of the state office held: the chairman of the House of Representatives Committee on Retirement or his designee; the chairman of the Senate Committee on Retirement or his designee; the commissioner of administration or his designee; and the state treasurer or his designee.

⁸ Act 645 of the 1991 Louisiana Regular Session repealed La. R.S. 36:769(D)(8) and (9) in their entirety. Prior to the repeal, these provisions recognized a transfer of Municipal Police Employees' Retirement System and FRS to the Department of Treasury. The *FRS v. Eisneramper* decision, *infra*, noted that this repeal was made in part to support the proposition that the state treasury was not a guarantor of retirement benefits supplied by the statewide systems.

declined to consider either system an "arm of the state" for purposes of diversity jurisdiction, reasoning:

The source and method of funding, and the fact that the state does not pay or guarantee the payment of the benefits in FRS and MERS, support the conclusion that they have financial independence from the state and its treasury such that they must be considered separate and distinct from the state, rather than an agency, alter ego or arm of the state.⁹

La. R.S. 42:3.2 does not provide a definition of the intended scope of coverage for a board or commission "in the executive branch of state government." However, we do note that the language in this statute is, by comparison, more limited than some other statutes in the same chapter.¹⁰ For example, La. R.S. 42:1 defines a public office as including both state and municipal officers; La. R.S. 42:2.1 applies to any board, commission, council, authority, or other similar entity that has statewide jurisdiction and is established by law, rule, executive order, or otherwise; La. R.S. 42:2.2, a provision governing the appointment of immediately family members, applies to all appointing authorities that make an appointment to any board, commission, council, authority or similar entity. The legislature chose to limit the application of La. R.S. 42:3.2 to boards and commissions in the executive branch of state government, and we find nothing to support the argument that this language should encompass a statewide retirement system.

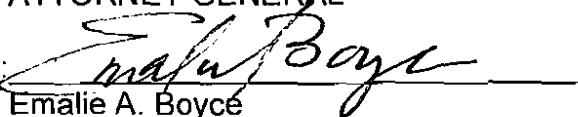
Therefore, it is the opinion of this office that the term limitations set forth in La. R.S. 42:3.2 for boards and commissions in the executive branch of state government do not apply to the board of trustees for FRS.

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:


Emalie A. Boyce

Assistant Attorney General

JDC: EAB

⁹ 3:14-cv-00182, p. 24, 2015 WL 5353204 at *10 (M.D. La. 2015).

¹⁰ Chapter 1 of Title 42, *Public Officers and Employees*, is entitled "Terms of Office or Employment."