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State of Louisiana
DEPARTMENT OF JUSTICE
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OPINION 15-0155

The Honorable Judi Abrusley
City Court of Oakdale
Post Office Box 565
Oakdale, LA 71463

The Honorable Gene Paul
Mayor, City of Oakdale
Post Office Box 728
Oakdale, LA 71463

90-A-1 PUBLIC FUNDS & CONTRACTS
La. Const. art. VII, § 14
La. R.S. 11:423

Pursuant to La. R.S. 11:423, the City of Oakdale may not pay the interest accrued on the employee portion of Louisiana State Employee's Retirement System contributions of an employee who was initially denied membership as the result of an administrative error.

Dear Judge Abrusley and Mayor Paul,

This office is in receipt of your requests, relating to which party bears financial responsibility for the interest payment owed to the Louisiana State Employee's Retirement System ("LASERS") as the result of an administrative error.

According to your request, when Judge Abrusley began her service as Ward 5 Judge on or about September 17, 2007, she was not properly enrolled in LASERS, but rather made retirement contributions to Social Security. As a result, no contributions by Judge Abrusley were made to LASERS and the City of Oakdale did not contribute the corresponding payments representing employer portion. The matter was presented to LASERS Legal and Executive Board for review, and was ruled an administrative error in April 2014. Judge Abrusley now seeks to have the appropriate amount of service credit reinstated.

La. R.S. 11:423 provides that an employee who was denied membership due to an administrative error shall be entitled to receive service credit for the period denied. It further allows for the purchase of service credit previously denied to the member upon payment by the employee and employer of an amount equal to the employee and employer contributions to the system, plus the accrued interest on each portion. In accordance with this provision, LASERS generated a service purchase invoice detailing the employee and employer contributions, together with the respective accrued interest, necessary to purchase credit for the state service of Judge Abrusley. A question has

arisen concerning the appropriate party to pay the accrued interest on the employee portion of the contributions.

Judge Abrusley has taken the position that an employee should not be responsible for the repayment of accrued interest on the employee portion of the contributions when the interest charges accrued as a result of an administrative error on the part of the employer.¹ The City seeks an opinion asking whether it may pay the accrued interest on the employee portion without violating La. Const. art. VII, § 14.

La. R.S. 11:423, which addresses state service for which credit has not been received due to an administrative error, and specifically provides:

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, intermittent 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

¹ The invoice generated by LASERS, and attached to the request, simply notes a service purchase due to administrative error pursuant to La. R.S. 11:423 and contains no assignment of fault.

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).

Our office addressed a similar issue in La. Atty. Gen. Op. No. 03-0266. There, we were asked whether the Department of Education was permitted to pay the interest accrued on the employee portion of contribution necessary for an employee to receive prior service retirement credit. Noting the mandatory language used in La. R.S. 11:423, which specifically requires the payment of interest accrued on the employee's portion of contributions to be paid by the employee, we concluded that the payment of such interest by the Department of Education would result in a gratuitous donation in violation of La. Const. art. VII, § 14.

Accordingly, it is the opinion of this office that it would violate La. Const. art. VII, § 14 for the City to pay the interest accrued on the employee portion of Judge Abrusley's retirement contributions. When an employee purchases service credit not previously awarded as the result of an administrative error, La. R.S. 11:423 requires the employer to pay the contributions and interest which has accrued on the employer portion of the amount owed in order to receive service credit for the period denied.² However, the language of La. R.S. 11:423 is clear that the employee is responsible for payment of both the contributions and the interest which has accrued on the employee portion of the total amount owed regardless of who was at fault for the administrative error. While we recognize that this conclusion may lead to a harsh result, the plain language of the statute precludes the ability of the City to pay the interest.

² Compare La. R.S. 11:422 which applies to the purchase of service credit denied for any reason other than an administrative error ("Creditable full-time state service may be purchased, at the option of the member, by paying the greater of the amount calculated in accordance with the actuarial cost provisions of R.S. 11:158 or the employee and employer contributions plus interest based on the member's current salary that totally offsets the increase in accrued liability of the system resulting from the receipt of the credit by the member.").

We hope this sufficiently answers your inquiry; however, if we may be of further assistance, please do not hesitate to contact our office.

With best regards,

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