



RICHARD P. IEYOUB
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
CIVIL DIVISION
BATON ROUGE
70804-9095

One American Place
301 Main Street, Suite 600
P.O. Box 94005
TEL.: (504) 342-7013
FAX: (504) 342-2090

AUGUST 24 1998
OPINION NUMBER 98-306

Syllabus

Honorable F. Michael Hilton
Ruston City Marshal
Post Office Box 1582
Ruston, Louisiana 71273-1582

60: Laws: General
92-A-2-(e): Retirement: Parochial Employees
107: Sheriffs: Constables and Marshals
107-1: Social Security
R.S. 13:1899(C)
AG Op No. 95-65

City marshal may implement a voluntary supplemental retirement plan and pay the employer's portion out of the funds collected pursuant to R.S. 13 1899(C)

Dear Marshal Hilton:

You have requested an opinion of the Attorney General regarding your authority to participate in a deferred compensation plan. You specifically ask whether you may pay the Employer's contribution for such a plan out of the Ruston Marshal's Office General Fund established pursuant to R.S. 13:1899(C). It provides, in pertinent part, the following:

"C. In all criminal matters, the city judge shall assess, in addition to the foregoing costs, the sum of ten dollars as additional costs of court, the proceeds from which shall be deposited in a special account, separate and distinct from the account provided for in Subsection B of this Section, which account shall be in the name of and under the control of the marshal or constable of the court, shall be subject to audit, and shall be used to defray operational expenses of the office of marshal or constable of the court, all as may be useful and necessary for the proper conduct of the marshal's or constable's office, ..."

As can be seen from the above, the marshal is authorized to use the funds collected pursuant to Section 1899(C) to defray the operational expenses of the office, all as may be useful and necessary for the proper conduct of said office.

This office has previously opined that a political subdivision is authorized to implement a voluntary supplemental retirement plan with employee contributions and employer match which would be separate from, and in addition to, a primary retirement plan or Social Security coverage. Attorney General Opinion No. 95-65. The opinion further concluded that matching contributions by the employer on behalf of an employee and/or elected or appointed official were permissible. I'm enclosing a copy of this opinion for your reference and convenience.

Further, it is the opinion of this office that the employer's portion of matching contributions may be payable from funds collected pursuant to R.S 13:1899(C).

Further, it is the opinion of this office that the employer's portion of matching contributions may be payable from funds collected pursuant to R.S 13:1899(C).

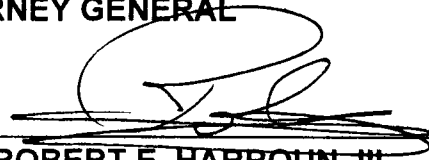
Extreme care should be taken by one seeking to implement such a plan to insure that the total amount of employee contributions eligible for a shelter does not exceed that allowable under federal law. In this regard, we recommend that, before implementing such a plan, you contact Tom Brisendine with the Office of Chief Council, Internal Revenue Service, (202) 622-6030. We further recommend that you contact Linda Yelverton, Department of the Treasury, Division of Social Security, (504) 342-0026, with regard to any questions pertaining to Social Security benefits.

Trusting this adequately responds to your inquiry, I am

Very truly yours,

RICHARD P. IEYOUNG
ATTORNEY GENERAL

By:



ROBERT E. HARROUN, III
Assistant Attorney General

RPI / Rob₃ / cla
Enclosure



RICHARD P. IEYOUS
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
Baton Rouge
70804-9095

P.O. BOX 94095
Tel.: (504) 342-4604
Fax: (504) 342-3885

MARCH 22 1995
OPINION NUMBER 95-65

Mr. Emery Bares, Chairman
Deferred Compensation Commission
2237 South Acadian Thruway, Suite 702
Baton Rouge, LA 70808

60 - Laws - General
92-A-2-(e) - Retirement/Parochial Employees
107-1 - Social Security

R.S. 42:1301, etc.

A political subdivision may establish a voluntary supplemental retirement plan with employee contributions and employer match, which plan would be separate from and in addition to a primary retirement plan or Social Security coverage. The plan could involve matching contributions by the employer on behalf of an employee and on behalf of an elected or appointed official unless the implementation of the match would exceed the compensation of an employee or official that is fixed by statute.

Dear Mr. Bares:

You have requested an opinion from the Attorney General regarding the Louisiana Deferred Compensation Plan. You note that the plan was established in accordance with R.S. 42:1301-1308 and IRC Section 457, for the purpose of providing supplemental retirement income to employees and independent contractors of a Louisiana public employer, by offering such individuals the opportunity to defer a portion of their compensation into the Plan.

Currently, participants and employers are utilizing the Plan under the following scenarios:

1. As a voluntary plan with employee only deferrals, separate from, and in addition to, a primary retirement plan or Social Security coverage.
2. As a mandatory plan with employee only deferrals, in lieu of Social Security coverage (as per IRC Section 3121).
3. As a mandatory plan with employee and employer contributions, in lieu of Social Security coverage (as per IRC Section 3121).
4. As a voluntary plan with employee contributions and employer match, as a supplemental retirement arrangement, separate from, and in addition to, a primary retirement plan or Social Security coverage.

You have requested our opinion concerning the following question:

May a political subdivision establish a voluntary supplemental retirement plan with employee contributions and employer match, which plan: (1) would be separate from, and in addition to, a primary retirement plan or Social Security coverage, and (2) which would involve matching contributions by the employer on behalf of an employee (whether classified or unclassified) and on behalf of an elected or

employee (whether classified or unclassified) and on behalf of an elected or appointed official (whether serving at a prescribed compensation level or on a per diem basis)?

In answer to your question, we have reviewed the provisions of this state's statutory and constitutional laws, and have consulted with representatives of the Louisiana Department of Treasury, Division of Social Security, as well as representatives of the Internal Revenue Service, and can find no prohibition against the implementation by a political subdivision of a voluntary supplemental retirement plan with employee contributions and employer match which would be separate from, and in addition to, a primary retirement plan or Social Security coverage. We further note that this question was previously addressed by this office in Opinion Nos. 90-292 and 292-A. Therein, it was opined that, if the Plan constitutes an authorized pension program, voluntary and/or involuntary contributions made by an employer would not be prohibited under the Consitution and laws of this state. See Article VII, Section 14(B)(2).

Further, we see no prohibition for said plan to involve matching contributions by the employer on behalf of an employee and/or elected or appointed official, with one exception. It is axiomatic that if the salary and/or per diem of a public official or employee is fixed by statute, that salary and/or per diem constitutes the maximum that can be received by that official or employee. Under the plan contemplated in your request, since any matching contribution by an employer comprises additional compensation to the official or the employee, same would constitute an increase over and above that authorized and/or allowed by law. Consequently, the employer match for an official and/or employee whose salary and/or per diem are fixed by law, can only be implemented to the extent that it does not result in the official's or employee's total salary surpassing that allowed by law.

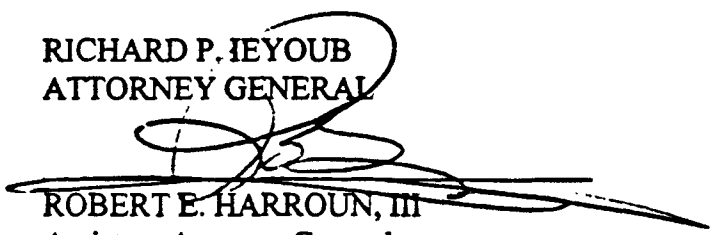
Extreme care should be taken by the political subdivision seeking to implement the plan that the total amount of employee contributions eligible for shelter does not exceed that allowable under federal law. In this regard, we recommend that any questions pertaining to federal laws on this subject matter be referred to Tom Brisendine with the Office of Chief Counsel, Internal Revenue Service, (202) 622-6030. We further recommend that any questions pertaining to Social Security benefits be directed to Linda Yelverton, Department of the Treasury, Division of Social Security, (504) 342-0026.

Trusting this adequately responds to your inquiries, I am

Yours very truly,

RICHARD P. IEYOUB
ATTORNEY GENERAL

BY:


ROBERT E. HARROUN, III
Assistant Attorney General

cc: Ellis Magee