

Opinion No. 89-15

April 6, 1989

OPINION OF: HAL STRATTON, Attorney General

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TO: Carlos A. Gallegos, Executive Secretary, Public Employees Retirement Association of New Mexico, P. O. Box 2123, Santa Fe, New Mexico 87504-2123

QUESTIONS

Are retirees of the Public Employees Retirement Association that the state legislature employs during the legislative session as "seasonal" employees subject to benefit suspension when their earnings exceed the maximum allowed by Section 10-11-8 NMSA (1987 Repl. Pam.)?

CONCLUSIONS

Yes, because Section 10-11-8 is the specific statute applicable to retirees, and that section contains no exception from benefit suspension for "seasonal" employment.

ANALYSIS

Subsection 10-11-8(C) of the Public Employees Retirement Act ("PERA"), Sections 10-11-1 to 10-11-140, NMSA (1987 Repl. Pam.), provides:

Except as provided in subsections D and E of this section, payment of a normal retirement pension shall be suspended at the end of the calendar month of the first calendar year in which a retired member, who is reemployed by or serves a term of office with an affiliated public employer, earns one hundred percent or more of the amount which causes a decrease or suspension of an old age benefit under the federal social security program subject to the following conditions:

- (1) the retired member shall become a member at the beginning of the first full pay period following suspension of payment of the pension;
- (2) the amount of pension shall be recomputed upon termination of the reemployment or term of office with the affiliated public employer, taking into account the credited service and salary resulting from the reemployment or term of office;
- (3) payment of the pension shall resume the first day of the calendar month following termination of the reemployment or term of office;

(4) the recomputation shall be made using the provisions of the Public Employees Retirement Act in effect on the date of the original retirement unless the retired member acquired at least three years of credited service on account of the reemployment or term of office;

(5) the recomputed pension shall not be less than the amount of the suspended pension but shall be made employing the form of payment selected by the retired member prior to resumption of the pension payments; and

(6) member contributions made for the period of reemployment or term of office shall be paid to the retired member upon resumption of pension payments if the amount of pension is unchanged by the period of reemployment or term of office.

Subsections D and E except from benefit suspension (1) a retiree who is appointed chief of police of an affiliated public employer other than the one from whose employment he retired; (2) a retiree who is appointed undersheriff; and (3) a retiree who is elected to serve a term of office as an elected official. Those retirees who are excepted from benefit suspension must file an irrevocable exemption from membership as provided in those subsections.

Subsection 10-11-3(B) provides:

The following employees and elected officials are excluded from membership in the association:

...

(4) employees designated by the affiliated public employer as seasonal or student employees

...

Subsection 10-11-3(C) provides:

Employees designated as seasonal and student employees shall be notified in writing by their affiliated public employer of the designation and the consequences of the designation with respect to membership, credited service and benefits. A copy of the notification shall be filed with the association within thirty days.

PERA rule 400.10(4)(a) defines "seasonal employee" as: "[A]n employee who works in a position created to last no more than 6 months in any calendar year, and who in any calendar year has an uninterrupted period of unemployment of at least 60 continuous days."

Employees that the state legislature hires in positions created to last no longer than the legislative session qualify as seasonal employees. Generally, Section 10-11-3 would

exclude such employees from membership in the association. That section, however, does not apply to retirees. The more specific statute, Section 10-11-8, does apply to retirees, both as to benefit suspension and membership resumption. As between two conflicting statutory provisions, the specific statute governs over the general; the more specific statute will be construed to be an exception to the general statute. See e.g., *Matter of Rehabilitation of Western Investors Life Insurance Co.*, 100 N.M. 370, 373, 671 P.2d 31, 34 (1983); *City of Alamogordo v. Walker Motor Co., Inc.*, 94 N.M. 690, 692, 616 P.2d 403, 405 (1980); *City of Albuquerque v. Redding*, 93 N.M. 757, 759, 605 P.2d 1156, 1158 (1980). Section 10-11-8, therefore, does not except from benefit suspension retirees who are hired as seasonal employees by an affiliated public employer.

Accordingly, we conclude that retirees of the Public Employees Retirement Association who are reemployed as seasonal employees by the state legislature are subject to benefit suspension when they exceed the maximum earnings permitted by Subsection 10-11-8(C).¹ We understand that the maximum allowed earnings commencing January 1, 1989 is \$8,880.

ATTORNEY GENERAL

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GENERAL FOOTNOTES

[n1](#) House Bill 795, passed by the 1989 New Mexico Legislature and awaiting action by the Governor, would amend Section 10-11-3 to permit "seasonal" legislative employees to elect association membership. That bill, if signed by the Governor, does not affect our conclusion in this opinion.