



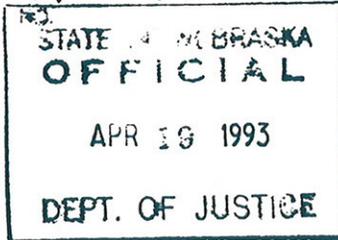
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DATE: April 9, 1993

SUBJECT: School Employees Retirement Act. Increased school district general fund expenditures mandated by LB 292 of the Ninety-third Legislature (1993) are not exempt from the growth limitations of the Tax Equity and Educational Opportunities Support Act.

REQUESTED BY: Senator Thomas R. Horgan, Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General,
Harold Mosher, Senior Assistant Attorney General

The statutory stated purpose of the School Retirement System is to provide "retirement allowances or other benefits for school employees of the State of Nebraska." Neb. Rev. Stat. § 79-1502 (Cum. Supp. 1992). - It is funded by monetary contributions made by school employees, their employers and the state. Neb. Rev. Stat. §§ 79-1531 and 79-1540 (Cum. Supp. 1992). The term "employer" is defined in the School Employees Retirement Act to mean "the State of Nebraska or any subdivision thereof or agency of the state or subdivision authorized by law to hire school employees or to pay their compensation." See, Neb. Rev. Stat. § 79-1501(7)(Supp. 1992). Assets of the School Retirement System are credited, according to the purpose for which they are held, to the Expense Fund or to one of five accounts, namely, the School Employees Savings Account, the School Employers Deposit Account, the Service Annuity Account, the Annuity Reserve Account, and the Contingent Account. Neb. Rev. Stat. § 79-1545 (Cum. Supp. 1992). Money in these accounts available for investment is invested by the state investment officer pursuant to Neb. Rev. Stat. §§ 72-1237 to 72-1269 (Reissue 1990), as amended.

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Senator Thomas R. Horgan
April 9, 1993
Page 2

If it becomes operative law, LB 292 of the Ninety-third Legislature, First Session (1993), would amend several operative statutes which comprise the School Retirement Act including Neb. Rev. Stat. §§ 79-1520, 79-1522.01 and 79-1549 (Cum Supp. (1992)). Among other things, LB 292 would change the minimum age at which school employees could retire and increase the factor by which retirement allowances are determined and paid in certain cases which in turn could (although not necessarily) cause employer general fund budgets to increase over present amounts. In addition, LB 292 would create a Reserve Fund (hereinafter, "fund"). Section 4 of the amendments to LB 292 states "Required deposits from the compensation of members and employers shall be accumulated in the fund to provide a cost-of-living benefit adjustment for each person who is retired or each surviving beneficiary who is receiving a retirement annuity from the School Retirement System of the State of Nebraska." This section also states:

(2) Member contributions into the fund shall equal three-tenths of one percent of compensation. Employer contributions into the fund shall be one hundred one percent of member contributions to the fund. (Emphasis added.)

In sum, LB 292 could cause employer general fund budgets to increase over present amounts, other things being equal, due to (1) the change in minimum age requirements for retirement allowances, (2) the mandated increase in the factor by which retirement allowances are determined and paid in certain cases and (3) the mandated expanded employer contributions to a reserve fund created by this legislative bill. Consequently, increases in employer budgets brought about by the operation of LB 292 as originally amended would not be subject to the growth limitations of Neb. Rev. Stat. §79-3819 (Cum. Supp. 1992).

Caveat. After you submitted your subject opinion request to this office, LB 292 was further amended on April 5, 1993. That amendment states as follows:

1. Insert the following new section:

Sec. 7. Any expenditure made by a school district pursuant to sections 79-1522.01, 79-1545, and 79-1549 as changed by this legislative bill and section 4 of this act shall be considered a general fund expenditure of the district and shall not be exempt from the growth limitations placed on district spending by the Tax Equity and Educational Opportunities Support Act.

Senator Thomas R. Horgan
April 9, 1993
Page 3

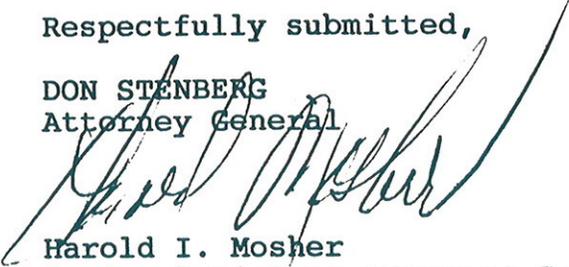
2. On page 1, lines 5 and 6, strike "section 4" and insert "sections 4 and 7".

3. Renumber the remaining sections accordingly.

The message in the above quoted amendment of April 5, 1993, seems clear: Increased school district general fund expenditures mandated by LB 292 of the Ninety-third Legislature are not exempt from the growth limitations of the Tax Equity and Educational Opportunities Support Act.

Respectfully submitted,

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APPROVED:



Attorney General

20-219-3.1

cc: Patrick J. O'Donnell
Clerk of the Legislature