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95076
NO.
STATE OF NEBRASKA
OFFICIAL
OCT 5 1995
DEPT. OF JUSTICE

DATE: October 2, 1995

SUBJECT: Effective Date Of Retirement Under The Nebraska School Retirement System; May An Effective Date Of Retirement Be Altered?

REQUESTED BY: James S. Cashin, CLU, Director
Nebraska Public Employees Retirement Systems

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

You have requested our opinion as to the application of certain portions of the statutes pertaining to the Nebraska School Retirement System, ***Neb. Rev. Stat. §§*** 79-1501 through 79-1567 (1994), to a set of facts involving a particular school employee who has retired. Our conclusions with respect to your opinion request are set out below.

We understand that the member of the School Retirement System in question visited your office on April 3, 1995, and indicated her intent to retire later in the year. In all respects under the statutes, she appeared eligible to retire. The next day, on April 4, 1995, your staff wrote to the member confirming various discussions held the day before about the retirement process. Your staff also enclosed various materials pertaining to that process along with the letter, including an Application for Retirement Annuity. The April 4 letter stated, "[t]he effective date of your retirement would be the first day of the month following the date upon which your application is received in our office, providing you have ceased employment in the school system."

On May 1, 1995, your office received all of the forms previously furnished to the member, completed as requested, except

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for the Application for Retirement Annuity. At that point, your standard office procedure is to acknowledge receipt of the forms, and had your staff done so, they could have reminded the member to send in the completed application form. However, for some unknown reason, the forms from the member were simply added to her file, and no acknowledgement was sent.

In August, 1995, the member returned to your office to inquire as to the status of her application. She was told at that time that her application remained to be filed. She has subsequently filed a proper Application for Retirement Annuity, and she has been assigned a retirement date of September 1, 1995.

While the retirement process has now been properly completed for this member, she has requested that the effective date of her retirement be recomputed as July 1, 1995. She apparently contends that had she been reminded in May to file her application, she would have done so in time to obtain that July 1 date. Since your staff did not follow standard office procedure concerning acknowledgement of her correspondence at that time, she believes that her retirement date should be changed. You have asked whether you may make such a change in light of Section 79-1501 (30) which reads, as is pertinent here:

> Retirement date shall mean the first day of the month following the date upon which a member's request for retirement is received on an application form provided by the retirement system if the member has ceased employment in the school system.

In addition to Section 79-1501 (30), Section 79-1520 provides:

> ***Upon filing a retirement application with the retirement system,*** a member who has completed thirty-five years of creditable service may retire at any age or a member who has completed at least five years of creditable service and is at least sixty years of age may retire.

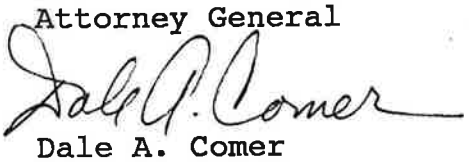
(emphasis added). We believe that those two statutes, considered together, clearly contemplate that an eligible member of the School Retirement System must file an application with your office in order to retire, and that the applicable retirement date in such an instance is the first day of the month following the date the member's application is received by your office. Apart from those two statutes, our research disclosed no additional statutes which authorize any different effective date, or which give you or the Retirement Systems Board discretion to alter a member's retirement date once it is established.

In Nebraska, an administrative body has no power or authority other than that specifically conferred by statute or by construction necessary to accomplish the plain purpose of the act. ***Ventura v. State Equal Opportunity Commission***, 246 Neb. 116, 517 N.W.2d 368 (1994). Since you have no specific authority to alter the member's retirement date under statute, we do not believe that you may do so. Her retirement date must remain September 1, 1995, the first day of the month following receipt of her Application for Retirement Annuity in your office.

We would also note that, while in some respects this may seem an unfair result, your staff did provide the member with an application form in April, and the April letter from your staff did state that the member's retirement date would be the first of the month after the Application for Retirement Annuity was filed. While it might have been more helpful for your staff to have followed standard office procedure in this instance so as to remind the member of the necessity for filing an application, there remains some duty on the part of the member to read the retirement materials and to follow through with the necessary procedures.

Sincerely yours,

DON STENBERG
Attorney General



Dale A. Comer
Assistant Attorney General

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Approved by:

Attorney General