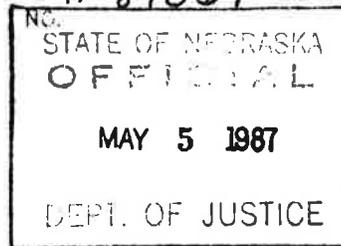


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

# 87069



ROBERT M. SPIRE  
Attorney General  
A. EUGENE CRUMP  
Deputy Attorney General

DATE: May 5, 1987

SUBJECT: Proposed Amendment of Legislative Bill 335  
Concerning Exemption of Retirement Plan Benefits

REQUESTED BY: Senator Don Wesely  
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General  
Fredrick F. Neid, Assistant Attorney General

This is in response to your questions concerning proposed amendment No. 1060 to Legislative Bill 335. Your specific inquiries are related to Section 4 of the proposed amendment to Neb.Rev.Stat. §44-1089 (Supp. 1986) appearing on page 1799 of the Legislative Journal for April 22, 1987.

Your inquiry appears to be the effect on state retirement and similar plans of the assignability provision of retirement plans contained in Section 4. The amendatory language of Section 4, in part, states:

All proceeds, cash values, and benefits accruing under any employer-funded retirement annuity, individual retirement account, or individual pension plan, which is funded with substantially equal, regular payments, shall be exempt from attachment, garnishment, or other legal or equitable process and from all claims of creditors of the annuitant, unless a written assignment to the contrary has been obtained by the claimant.

This provision, in general, subjects these types of retirement benefits to legal process if the claimant has obtained a written assignment from the annuitant (beneficiary). It is our opinion that the proposed amendment would have no effect on the non-assignability of benefits of the state, school, and retirement plans you have inquired about.

Neb.Rev.Stat. §44-1089 (Supp. 1986), is a general statute having general application. The governmental retirement plans you have inquired about are established by separate legislative

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acts which include specific exemption provisions. For example, Neb.Rev.Stat. §84-1324 (Supp. 1986) provides:

All annuities or benefits which any person shall be entitled to receive under the State Employees Retirement Act shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency, or any other process of law whatsoever and shall not be assignable, except that a judgment, decree, or order including approval of a property settlement agreement made pursuant to law that relates to child support, alimony payments, or marital property rights of a spouse, former spouse, child, or other dependent shall be complied with.

The same or similar exemption provisions are contained in statutes pertaining to retirement systems for counties, school employees, judges, legislators, and the state patrol. These statutes expressly provide that the retirement benefits are not assignable and are exempt from legal process.

It is a well-established rule that special provisions of a statute in regard to a particular subject will prevail over general provisions in the same or other statutes so far as there is a conflict. Hall v. Cox Cable of Omaha, Inc., 212 Neb. 887 (1982). Kibbon v. School District of Omaha, Inc., 196 Neb. 293 (1976). Accordingly, where general and special statutes are in conflict, the general law yields to the special. For this reason, it is our opinion the the proposed amendatory language concerning assignability would have no application to the state and similar retirement plans you have inquired about.

You have also inquired concerning the potential liability of the retirement plans if benefits were assigned by a state employee who terminated employment and amounts in the employers account were forfeited as a result. It is our opinion that the forfeited amounts would not be subject to legal process because of express provisions precluding assignability. A purported assignment would be invalid. Further, even if retirement plan benefits were assignable, an assignee (creditor) is entitled to no greater rights or benefits in the plan than the assignor (beneficiary). Accordingly, forfeited amounts would continue to be forfeited in the event of a valid permissible assignment.

While the exemption provisions for these plans remain intact, it is important to point out that this protection from legal process is limited. The protection exists and continues only while the funds and benefit amounts are in the hands of the retirement system. Once benefits or annuity amounts are released to the beneficiary, the amounts are subject to legal process the

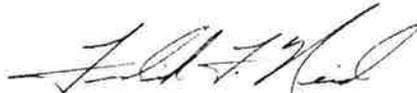
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same as any other property or assets in the hands of a debtor obligor.

Since it is our opinion that the proposed amendment would not "countermand" the existing exemption provisions and would not increase the liability of the retirement plans, it is not necessary to address the other questions you have raised.

Sincerely,

ROBERT M. SPIRE  
Attorney General



Fredrick F. Neid  
Assistant Attorney General

FFN:jem

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

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APPROVED:



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Attorney General