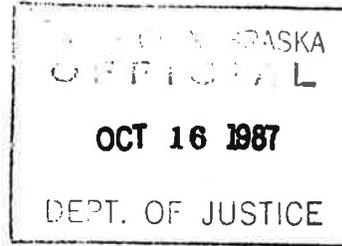


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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

#87103



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

DATE: October 16, 1987

SUBJECT: Use of Earnings of School Retirement Funds for Funding Permanent Increases for Retired Teachers

REQUESTED BY: Senator Don Wesley  
Nebraska State Legislature

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

You have requested our opinion concerning use of earnings of School Retirement Funds to provide increased benefits. Initially you inquire whether earnings may be used to fund increases in minimum retirement benefits for retired teachers. Your second question concerns whether the increased benefits funded by earnings would need to be considered a "cost-of-living increase".

It is the opinion of this office that earnings of School Retirement Funds may not be used to fund permanent increases for minimum benefits for retired school teachers absent requisite statutory authority. There currently is no statutory authority for application of income or earnings for this purpose.

The various benefits, investment of retirement amounts, application of income, and the general administration of the School Retirement System is provided for and governed by statute. All earnings, dividends, interest and other income of the various School Retirement Funds are paid to a specific fund, the Contingent Fund, which is established under Neb.Rev.Stat. §79-1545 (Reissue 1981). The income amounts are then allocated to other statutorily-created funds, the Annuity Reserve Fund, the Service Annuity Fund, the School Employee's Savings Fund, and the School Employer's Deposit Fund. An amount equal to administration costs is paid from the Contingent Fund to another separate fund, the Expense Fund.

These funds are established by statute with expressed purposes for application of fund amounts. The expressed purposes do not include using fund amounts, or earnings, to effect a general increase in benefit levels for retired teachers.

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Senator Don Wesley  
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Increased or supplemental benefits for retired persons of the School Retirement System are appropriately provided for by legislative enactment and appropriation of amounts for funding purposes. The Legislature has previously enacted specific legislation to provide increased benefits for retired persons of the School Retirement System. Neb.Rev.Stat. §79-1558 (Reissue 1981) provides for supplemental retirement benefits for retired persons. Funding for amounts by appropriation for the supplemental benefits is provided for under Neb.Rev.Stat. §79-1564 (Supp. 1986).

Since it is our conclusion that earnings of School Retirement Funds may not be used to provide increased benefit levels for retired teachers, it is not necessary to address the second question you have raised.

Sincerely,

ROBERT M. SPIRE  
Attorney General



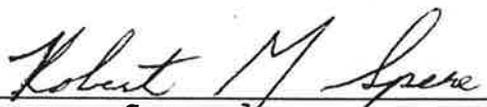
Fredrick F. Neid  
Assistant Attorney General

FFN:jem

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

87-01

APPROVED:

  
Robert M. Spire  
Attorney General