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NO. STATE OF NEBRASKA
OFFICIAL
JUL 10 2002
DEPT. OF JUSTICE

SUBJECT: LB 687, Vesting Requirements for Members of the State Employees Retirement System of the State of Nebraska

REQUESTED BY: Anna J. Sullivan, Director
Nebraska Public Employees Retirement Systems

WRITTEN BY: Don Stenberg, Attorney General
Fredrick F. Neid, Assistant Attorney General

In connection with your responsibilities as Director of the Nebraska Public Employees Retirement Systems, you have requested an opinion of the Attorney General addressing the vesting requirements for members participating in the State Employees Retirement System following enactment of LB 687. The specific question you appear to ask is whether the twelve months of service (employment), required of members for participation in the retirement system, is included within the three year vesting period established in Neb. Rev. Stat. §84-1321 as amended by 2002 Neb. Laws LB 687, §28.

By way of background, LB 687 was enacted during the 2002 second session of the Legislature and signed by the Governor on April 17, 2002. Among other things, LB 687 amended provisions of the State Employees Retirement Act, Neb. Rev. Stat. §§84-1301 to 84-1331 (1999, Cum. Supp. 2000, Supp. 2001, and as amended by 2002 Neb. Laws LB 687)(the Act) concerning eligibility and vesting requirements. The State Employees Retirement System is the retirement benefit plan established for Nebraska state employees created under the provisions of the Act. The eligibility, participation, and vesting

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requirements for members are set forth in provisions of the Act. Thus, the issue presented by your question is one of statutory construction. As with any question of statutory construction, we begin with the language of the legislative acts.

LB 687 AMENDMENTS

The vesting requirements for members participating in the retirement system are reposed in §84-1321. Following amendment by LB 687, § 84-1321 states in relevant part:

> (3) Members of the retirement system shall be vested after a total of three years participation in the system, including eligibility and vesting credit.
>
> (Emphasis added).

Prior to amendment, § 84-1321 in part stated:

> (3) Members of the retirement system shall be vested after a total of five years of (a) participation in the system, plus (b) eligibility and vesting credit.
>
> (Emphasis added).

In addition to changing the vesting period, LB 687 also changed the eligibility requirements for employee participation in the retirement system. The requirements are set out in Neb. Rev. Stat. § 84-1307 as amended by 2002 Neb. Laws LB 687, §20 in the following respects:

> (1) The membership of the retirement system shall be composed of all persons who are or were employed by the State of Nebraska and who maintain an account balance with the retirement system.
>
> (2) The following employees of the State of Nebraska are authorized to participate in the retirement system:
>
> (a) All permanent full-time employees who have twelve continuous months of service shall begin participation in the retirement systems; and
>
> (b) All permanent full-time or permanent part-time employees, who have twelve months of service within a five year period and who have attained the age of twenty, may exercise the option to begin participation in the retirement system...

Before amendment, the eligibility requirements were set out in § 84-1307 as follows:

(1) The membership of the retirement system shall be composed of (a) all permanent full-time employees who have twenty-four continuous months of service and who have attained the age of thirty, and (b) all permanent full-time or permanent part-time employees who have twelve months of service within a five-year period, who have attained the age of twenty, and who may exercise the option to join the retirement system...

APPLICATION OF STATUTORY PROVISIONS

The LB 687 amendments changed the vesting period to three years. To determine whether the twelve month eligibility period is included within the three year vesting period, it is necessary to ascertain the meaning of the phrase, "eligibility and vesting credit," as that term is meant and used in § 84-1321. The term is defined in Neb. Rev. Stat. § 84-1301 (Cum. Supp. 2000) which in part states:

(4) Eligibility and vesting credit means credit for years, or a fraction of a year, of participation in a Nebraska governmental plan for purposes of determining membership in the system and vesting the employer account.

The term, "eligibility and vesting credit" is defined in § 84-1301 to include the twelve month eligibility period. The statutory language describes the credit as participation in a Nebraska governmental plan for the purpose of determining membership in the retirement system as well as for the purpose of determining vesting. And, the retirement system is a Nebraska governmental plan. Accordingly, we conclude that the twelve month eligibility period is included within the three year vesting period established in § 84-1321 as amended by LB 687.

The language used in § 84-1321 before and after amendment, considered in its plain and ordinary sense, supports the conclusion that the eligibility and vesting credit is intended to be part of the three year vesting requirement. In discerning the meaning of statute, a court must determine and give effect to the purpose and intent of the Legislature, as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense, as it is the court's duty to discover, if possible, the Legislature's intent from the language of the statute itself. *In re Referral of Lower Platte South Natural Resources Dist.*, 261 Neb. 90, 621 N.W.2d 299 (2001); *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Com'n*, 260 Neb. 905, 620 N.W.2d 90 (2000).

The word, "plus," was used in § 84-1321 with reference to the eligibility and vesting credit prior to amendment. The word, "plus," is commonly understood to mean "an added or extra quantity or thing." After amendment, the word "including," is used with reference to the eligibility and vesting credit. The word, "include," considered in its plain and ordinary sense, means "to have as a part of a whole; to contain, comprise." See Webster's New Universal Unabridged Dictionary (2d Ed. 1983).

LEGISLATIVE HISTORY

It is appropriate to review the legislative history to ascertain the meaning of a statute. Of course, a statute is open to construction when the language used requires interpretation or may reasonably be considered to be ambiguous. *Kimball v. Nebraska Department of Motor Vehicles*, 255 Neb. 430, 586 N.W.2d 439 (1998); *State ex rel. City of Elkhorn v. Haney*, 252 Neb. 788, 566 N.W.2d 771 (1997). And, the legislative history of the act in question may be examined to ascertain the intent of the Legislature. *State ex rel. Stenberg v. Moore*, 258 Neb. 199, 602 N.W.2d 465 (1999); *Omaha Public Power District v. Nebraska Department of Revenue*, 248 Neb. 518, 537 N.W. 312 (1995).

The legislative history of LB 687 resolves any doubt as to the vesting requirement and legislative intent. The Legislative Retirement Systems Committee's records include the following as a statement of purpose for the Bill:

> Explanation of amendments, if any:
>
> ... We further added a provision that will accelerate the vesting schedule to a total of 3 years rather than the current 6 years.

Section By Section Summary:

Section 14: Vesting is shortened from five years to three years, including both eligibility and vesting credit.

Committee on LB 687, 97th Neb. Leg., 2d Sess., Nebraska Retirement Systems Committee Statement, 2, 4.

Statements made during the floor debates are also instructive and reflect that the vesting period is to be three years which includes the one year eligibility period. The Committee records include the following statement:

> Currently, employees must work for one year before they are eligible to participate in the retirement plan. After they have contributed to the retirement plan for five years, they vest in both their employee and employer accounts. In essence, all state and county employees now must work for six years before vesting. Under LB 687, the employees would vest in the total of three years. They would work one year and then could vest after contributing for two years rather than the current five.

Floor Debate on LB 687, 97th Neb. Leg. 2d Sess. 11461 (March 12, 2002) (Statement of Sen. Schrock).

For these reasons, it is our opinion that the three year vesting period of § 84-1321 following amendment by LB 687, includes the twelve month eligibility period and two years of participation in the retirement system as a contributing member. It is further our view that the vesting period established by the LB 687 amendments should be implemented by the Public Employees Retirement Systems from the date of passage of LB 687 into law.

A legislative act passed with an emergency clause goes into effect the day following its approval by the Governor. *Jaksha v. State*, 241 Neb. 106, 486 N.W.2d 858 (1992). LB 687 was passed with the emergency clause and therefore, went into effect the day following its approval by the Governor, April 18, 2002.

Sincerely,

DON STENBERG
Attorney General

Fredrick F. Neid
Assistant Attorney General

Approved:

Attorney General

21-203-09