



October 17-18, 1994
Room 15 Capitol

31st Meeting



LEGISLATIVE COMMISSION ON PENSIONS AND RETIREMENT

MINUTES

Senator Phil Riveness, Chair of the Legislative Commission on Pensions and Retirement, called the meeting to order at 1:20 P.M.

Commission members present:

Representatives Mindy Greiling, Bob Johnson, Phyllis Kahn, and Leo Reding
Senators Lawrence Pogemiller, Phil Riveness, LeRoy Stumpf, and Roy Terwilliger

2. **Volunteer Fire Regulation Revision and Clarification (Second Consideration)**

Lawrence A. Martin, LCPR Executive Director, briefly recapped the Commission's activity on this topic to date. He noted that there were three staff memos related to volunteer firefighter issues in members packets. The first memo summarized the issues raised by the State Auditor's Office and the State Fire Department Association. The second memo provided an indepth study on the changes in the fire state aid program. The third memo reviewed the data and method for calculating administrative expense requirements for volunteer fire plans.

Stanley Peskar, General Counsel for the League of Minnesota Cities, provided a handout that expressed the League's position on volunteer firefighter issues. He expressed appreciation for the work of the State Auditor's Office over the past two years with regard to volunteer fire relief associations. Mr. Peskar testified that the League supports legislation to facilitate volunteer fire relief association's conversion to defined contribution plans. Mr. Peskar also reviewed comments from city officials in response to the League's solicitation. Some of the comments were that pension laws are too complex, vesting requirements should not be further reduced, the State Auditor's oversight fee has reduced fire state aid, and city officials do not understand the ramifications of pension benefit changes. Mr. Peskar continued and discussion followed.

Mr. Martin noted that the State Auditor recommended that the open meeting law apply to volunteer firefighter relief association meetings and require timely notice of meetings to city officials. He asked Mr. Peskar if he could suggest a way to improve the involvement of city officials on relief association boards. Mr. Peskar suggested possibly adding finance officers as well as city clerks and mayors to relief association boards. Discussion followed.

Rep. Reding asked what the League's position was with regard to the difference in the maximum benefit amount for relief associations with a lump sum benefit as opposed to those with a monthly benefit. Mr. Peskar responded that the lump sum benefit recipients should have a small advantage over monthly benefit recipients and he would like to see an increase in the lump sum benefit maximum.

Mr. Peskar updated the Commission on the status of the Eden Prairie issue and stated that negotiations are currently underway with Eden Prairie with regard to establishing a defined contribution program to solve their recruitment and retention problem.

He continued to review the League's position on volunteer fire issues. Rep. Johnson stated that he is aware of some support for a defined contribution plan on the part of some firefighters as well as some legislators but he is concerned about municipal responsibility in a defined contribution plan. Rep. Greiling questioned whether a combination of defined benefit and defined contribution plans was feasible. Mr. Peskar testified that the League was open to that combination.

Mr. Peskar testified that the League would like fire department consolidations facilitated by legislation and would also like to see legislation that would enable multi-employer volunteer firefighter relief associations. Sen. Riveness asked how aware are municipalities of the ramifications of good relief association investment policy on the taxpayers and in providing periodic benefit increases. Mr. Peskar responded that there is not enough awareness of the importance of good investment decisions on relief association assets. Mr. Martin asked for an estimate of the number of volunteer fire departments that compensate or provide benefits to

firefighters in addition to pension benefits. Mr. Peskar responded that the majority of volunteer fire departments provide compensation in addition to pension benefits.

A.J. DeAntoni, The Gray Eagles Association, provided members with two handouts. He testified that they have been excluded from Bloomington Fire Relief Association meetings and are opposed to the City of Bloomington taxing its citizens to fund a volunteer fire relief association when the association's special fund is \$11,000,000 overfunded and has a \$2,000,000 general fund. Mr. DeAntoni testified that legislation passed last session reduced the municipal contribution by 10% over a ten years period if a relief association was overfunded. He continued with his testimony. Sen. Riveness stated that the legislation passed last session reduced Bloomington's municipal contribution by approximately \$1,000,000 a year. Senator Riveness restated Mr. DeAntoni's concern that both the relief association's special fund and general fund should be subject to the open meeting law and that when a fund has a surplus it should be returned more quickly to the municipality than is permitted by last session's legislation. Mr. DeAntoni testified that he was advised that the only control over volunteer fire relief associations was to withhold state aid.

- 3. **Consideration of a Legislators-Constitutional Officers Joint Retirement Fund**
Mr. Martin reviewed the background and staff memo on this topic. He noted that the memo provided three potential approaches for establishing a separate dedicated fund and he reviewed the budgetary impact of dedicated funding for these two plans.

Sen. Riveness stated that establishment of a dedicated fund would not provide a benefit increase it would simply provide a consistent, predictable method of funding these two plans that would eventually save money for Minnesota taxpayers. Discussion followed. Sen. Riveness asked whether there was information on what the cost savings would be over a 20 year period if a dedicated fund was established.

Doug Mewhorter, MSRS Assistant Director, and Arvin Hermann, MSRS Finance Director, testified in support of establishment of one fund for the two plans. Mr. Hermann testified that the first step would be to accumulate member contributions and second to create matching employer contributions. He testified that currently member contributions go directly into the state's general fund and an appropriation is made from the general fund for retiring members. Discussion followed and Mr. Hermann stated that MSRS supports establishing a fund as good public policy since approximately 65% of MSRS-General's revenue comes from investment returns.

- 1. **Approval of Minutes of September 21 and 22, 1994 Meeting**
Rep. Greiling moved approval of the September 21st and 22nd meeting minutes. **MOTION PREVAILED.**

The meeting adjourned at 3:05 P.M.

October 18, 1994
Room 15 Capitol

Senator Phil Riveness, Chair of the Legislative Commission on Pensions and Retirement, called the meeting to order at 10:20 A.M.

LCPR Commission members present:

Representatives Mindy Greiling, Bob Johnson, Phyllis Kahn, and Leo Reding
Senators Lawrence Pogemiller, Phil Riveness, and LeRoy Stumpf ---

- 1. **Consideration of Federal Tax Code Compliance for Certain Section 403(b) Annuity Plans (Second Consideration)**
Lawrence A. Martin, LCPR Executive Director, reviewed the staff memo on this issue and noted that the Commission is mandated to study this topic. Mr. Martin stated that the memo provided data on the number of school districts (43) and employees (2,500) who participate in the 403(b) matching contribution plan. He noted that some pre-1971 tax sheltered programs were grandparented in by Minnesota Statutes, Section 356.24 and he briefly reviewed several observations made with regard to the data collection. Mr. Martin then reviewed some of the Commission's options to achieve several potential policy goals the Commission may want to pursue.

Richard W. Skillman, Caplin & Drysdale, Washington D.C., began his testimony by providing information on his background. He testified that he has been practicing federal tax law in Washington D.C. for the last 22 years, primarily in the area of tax deferred savings programs for public school teachers, college and university personnel and employees of non-profit organizations under sections 403(b) and 457 of the Internal Revenue Code. Three years ago, in an appearance before the LCPR, Mr. Skillman testified in support of including 403(b) plans in the matching contribution program as a sound pro-savings idea. He stated that he believes the current 403(b) compliance concern is not wellfounded. He further testified that adding a matching contribution to a 403(b) plan does not cause additional compliance problems. Mr. Skillman summarized the federal rules stating that 1) a formal plan document is a good idea but is not required; 2) employee notification is not required; 3) 403(b) plans do have a distribution requirement; 4) there are deferral limits; 5) there is a "minimum participation" requirement effective in 1996 but in actuality it is a minimum eligibility requirement; and 6) there is a non-discrimination requirement known as an Actual Contribution Percentage (ACP) test. An element of the ACP test is that the average match paid for highly compensated employees cannot be more than 200% of the average match for non-highly compensated employees. Mr. Skillman testified that a 403(b) matching program that covers collective bargaining employees and non-collective bargaining employees, automatically satisfies the ACP test for the collective bargaining employees and the test would be applied separately for the non-collective bargaining employees. He recapped by stating that at most the 403(b) matching program is dealing with a potential compliance burden relating to a single federal requirement that has no applicability to collectively bargained employees, it would affect only a small percentage of non-collectively bargained employees, and it could be avoided altogether by structuring the program in a different way.

Patrick Nelson, Deputy Commissioner from the Department of Commerce, testified that the Department of Commerce is only remotely involved in this issue. The Department of Commerce reviews all annuity programs for compliance with state law but not for anything related to federal laws or IRS rule compliance. Mr. Nelson testified that the Commerce Department did check the eight insurance companies' ratings. He further stated that the State Board of Investment could have checked the ratings since SBI receives the same reports that Commerce receives. Sen. Riveness asked who was responsible for making sure that the companies marketing these products are complying with all applicable laws. Mr. Nelson responded that the majority of the burden falls to the school districts. He also stated that the Commerce Department does not have the expertise to review these programs for federal law compliance. Discussion followed.

Alve Jemtrud, Director of Member Services for MEA, and Mark Meyer, William M. Mercer Inc., were attending on behalf of MEA. Mr. Jemtrud testified that in 1971 Minnesota became the only state to prohibit employer matching contributions to 403(b) plans. In 1988 matching contributions were permitted in 457 plans. In 1992 matching contributions were expanded to include 403(b) plans. Mr. Jemtrud testified in support of the 403(b) matching contribution program. He testified that it allows employees to take advantage of early retirement incentives and allows districts to reserve money necessary to cover severance packages.

Mr. Meyer referred members to page 17 in the TSA Guide For Minnesota Public School Districts, 1994 Edition, which describes the ACP nondiscrimination test that may be effective in 1996. Discussion followed.

Bob Gunderson, MFT, testified that the matching contribution program was negotiated to address the problem of the unfunded liability in severance packages. He testified in support of the 403(b) matching contribution program.

Sen. Riveness asked for comments on the current number of insurance companies and whether the matching contribution program was being used primarily by the wealthier school districts. Mr. Jemtrud responded that the program was not being used primarily by wealthy school districts and that he favored an unlimited number of insurance companies. Sen. Pogemiller questioned whether it was necessary to expand the program to include 403(b) plans to address the unfunded liability issue in severance packages. Mr. Jemtrud responded that matching contributions to 457 plans did address the problem but employees wanted the higher limits allowed in 403(b) plans. Discussion followed and Sen. Pogemiller stated that the matching contribution program is difficult to justify when there are problems in funding the basic operation of schools.

Richard Shager, Tax Sheltered Alliance from Stillwater, testified that he supports rescinding

the current law and passing a new law that would allow school district contributions to be made only to 401(a) plans, permit employee contributions to be made only to 403(b) and 403(b)(7) plans, and allow an unlimited number of insurance companies to market the plans.

Robert Hengelfelt, Tax Sheltered Alliance and a representative of one of the eight chosen companies, testified that approximately 40% of his more than 1,000 clients are educators. Most of his clients use 403(b) plans without employer matching contributions. He opposes the employer matching contribution program. He believes that the current matching contribution program has serious compliance problems. He testified that he believes it is an unnecessary incentive to have a matching employer contribution when 70% of school district employees are utilizing 403(b) plans without a match in the school districts he visits. He suggested that if 403(b) employer matching contribution plans continue to be permitted, the legislature should provide school districts with guidance as well as estimates of the costs and liabilities of 403(b) employer matching contribution plans and mutual funds should be permitted as an investment option. Mr. Hengelfelt testified that he was recently informed that three metropolitan school districts have withdrawn their employer matching contribution programs after seeking independent counsel on this issue. Discussion followed. Sen. Riveness asked if Mr. Hengelfelt could provide any expert proof or information to back his viewpoint that the employer matching contribution is headed toward a crisis. Mr. Hengelfelt stated that he would provide information.

Don Bungum, a former school superintendent and now a Lindstrom Financial Planner, testified in opposition to the 403(b) employer matching contribution program as it complicates 403(b) plans.

Michael King, Universal Pensions, testified that he agreed with everything Mr. Skillman said regarding the non-discrimination rule. Mr. King believes it is a non-issue. He would like to see mutual funds added as an investment option to the current state 403(b) program. He would like to see an unlimited employer matching contribution and legislation that would enable school districts to use 403(b) programs to eliminate the unfunded liability in their current severance programs. Discussion followed. Mr. King agreed to provide members with additional information on this topic.

The meeting adjourned at 12:13 P.M.


Jean Liebgott, Secretary