

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

January 24, 2019

H. Ray Higgins, Jr.
Executive Director
PERS of Mississippi
429 Mississippi Street
Jackson, Mississippi 39201

Re: PERS Retirees Serving in the Mississippi Legislature

Dear Director Higgins:

Attorney General Jim Hood received your request for an opinion and assigned it to me for research and reply.

Your letter asks: "[m]ay a sitting legislator retire and continue serving as an elected member of the Mississippi Legislature without a ninety (90) day break in service" and be eligible to receive retirement benefits under Section 25-11-127(4)?

No in most cases. Section 25-11-127 states: "**After the person has been retired** for not less than ninety (90) consecutive days from his or her effective date of retirement or such later date as established by the board, he or she **may be reemployed** while being paid a retirement allowance under the terms and conditions provided in this section." Miss. Code Ann. Section 25-11-127(1) (emphasis supplied). The statute requires that a person be retired and not employed by the State for a period of ninety (90) days before being "reemployed."

However, PERS must consider, on a case-by-case basis, whether a prior period of retirement should be credited due to previous information or guidance given which was contrary to the provisions of Section 25-11-127, or to determine whether, due to the age or length of service of the PERS member, the application of the requirement violates any fundamental rights held by the member or contractual rights existing under previous versions of the law.

The second question references Sections 5-1-41, 5-1-47 and 25-11-103(k)(iii) and asks: "What amount of compensation must be used to determine the total salary in effect for the position of a legislator under Section 25-11-127(4)(a)?"

Section 25-11-103(k)(iii) defines the term "earned compensation." Because Section 25-11-127(4)(a) uses the term "salary" and not "earned compensation," we look elsewhere to determine what constitutes salary. Section 5-1-47 states that representatives and senators are entitled to receive certain expenses which are "[i]n addition to the regular salary and mileage provided by law." Miss. Code Ann. Section 5-1-47(1). Because the expenses in Section 5-1-47 are "in addition to the regular salary," a legislator would continue to receive those expenses, but those expenses are not counted as salary for purposes of Section 25-11-127(4)(a). Separately, Section 5-1-41 provides for compensation and mileage for legislators. All sums paid to legislators under Section 5-1-41, with the exception of mileage, would be considered salary for purposes of Section 25-11-127(4)(a).

The third question is: "[m]ay reemployed retiree members of the Mississippi Legislature waive half of their salary to be paid one-half (1/2) the salary for the position in order to meet the requirements set forth in Section 25-11-127(4)(a) of one-half (1/2) of the normal working days for the position and one-half (1/2) of the salary in effect for the position?"

Section 25-11-127(4)(a) provides explicit authorization for a retiree who is reemployed on a half-time basis and elects to draw a retirement allowance to "receive no more than one-half (1/2) of the salary in effect for the position at the time of employment."

The fourth question references the definition of "earned compensation" in Section 25-11-103(k)(iii) and asks: "[i]f a retiree is elected to the Legislature and returns to work under Section 25-11-127(4)(b), must the full amount paid to the legislator, except mileage allowance, be taken into consideration when determining the amount *earned* by the reemployed retiree serving in the Legislature?"

Yes, the full amount of the "earned compensation," as that term is defined in Section 25-11-103(k)(iii) and which excludes mileage, is taken into consideration when determining the amount earned by the reemployed retiree serving in the Legislature under Section 25-11-127(b).

The fifth question is: "[a]ccording to the 2018 Report on the Annual Valuation of the Public Employees' Retirement System of Mississippi (PERS), the average earned compensation for an active PERS member is \$39,813. Based on the answer provided for question four above, may a retiree who retired with an average compensation of \$39,813 be reemployed as a member of the Mississippi Legislature under Section 25-11-127(4)(b)?"

A retiree who is serving in the Legislature may receive their retirement benefit if they meet the requirements of Section 25-11-127(1) and 25-11-127(4)(a) or (b).

The sixth question is: "[m]ay a sitting member of the Mississippi Legislature receive a

H. Ray Higgins, Jr.
January 24, 2019
Page 3

benefit from the Supplemental Legislative Retirement Plan (SLRP) as a reemployed retiree?"

We assume your question to be: May retirees who are receiving a retirement allowance from both PERS and SLRP continue to receive the allowance from SLRP upon returning to elective office in the Legislature? The answer is yes. Section 25-11-309 provides the circumstances, amounts, and limitations by which a retired legislator can receive a benefit from SLRP. The statutes creating SLRP do not contain any prohibition on the receipt of a benefit as a reemployed retiree. See Miss. Code Ann. Sections 25-11-301, *et seq.*

The seventh question is: "[i]f a retiree is elected to the Mississippi Legislature while receiving a PERS benefit, will that reemployed retiree receive new service credit in SLRP?"

No. Section 25-11-309(1) connects benefits under SLRP to "the retirement allowance determined by creditable service as an elected Senator or Representative of the State Legislature or as President of the Senate payable by the Public Employees' Retirement System in accordance with Section 25-11-101 *et seq.*"

OFFICIAL OPINION

These incorporated sections terminate the accumulation of "creditable service" by a PERS retiree who returns to office under Section 25-11-127. For example, Section 25-11-127(1)(c) provides that "[n]o person employed or elected under the exceptions provided for in this section shall become a member under Article 3 of the retirement system." In addition, Section 25-11-127(5) provides that the "retiree shall not receive any additional creditable service in the retirement system as a result of the payment of the employer's contribution."

The eighth question is: "must the Mississippi Legislature pay employer contributions to SLRP for reemployed retirees?"

Yes. By statute, employer contributions must be made under both PERS and SLRP when a PERS retiree takes office as a senator or representative under Section 25-11-127(4). See Miss. Code Ann. Section 25-11-127(5) (addressing PERS); Miss. Code Ann. Section 25-11-307(2) (addressing SLRP and requiring employer contributions on behalf of "each member" of the Legislature).

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



James Bobo
Special Assistant Attorney General