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October 5, 2006

SUGGESTIONS FOR LEGISLATIVE REFORMS FOR PART TIME EMPLOYEES ENROLLED IN THE PENSION SYSTEM

The New Jersey Institute of Local Government Attorneys (ILGA), an organization dedicated to furthering professionalism and education among local government attorneys, issued a Position Paper in the summer of 2006 in which it pointed out the benefits of permitting local government attorneys to participate in the Public Employees Retirement System (PERS). Some of the advantages noted were that participation in the pension system allowed local governments to attract highly talented lawyers who specialized in municipal law at rates very favorable to municipalities. The bargain being struck essentially was that the local government attorneys, who could command much higher rates in the private sector, would accept lower rates in return for receiving pension benefits. Additional benefits noted were that making the attorney an employee of the local government allowed municipalities to predict the majority of their legal fees for the year thereby avoiding unanticipated budget surprises and reducing paperwork for municipal officials.

The Position Paper also pointed out that local government attorney participants in the pension system pay their fair share of the pension costs, like other municipal employees, and very few participate in other benefits offered by local government such as medical, dental, vacation and sick leave.

The implied contract by which local government attorneys have agreed to work for lower rates in return for participation in the pension system has been acknowledged by the recent opinions by the Attorney General and the Office of Legislative Services, which addressed the issue of whether pension benefits could be reduced for public employees. The Opinion of the Office of Legislative Services, dated August 21, 2006, quoted a 1969 decision of the New Jersey Supreme Court which pointed out the "primary objective in establishing [pension systems] is to induce able persons to enter and remain in public employment, and to render faithful and efficient service".

Those Opinions also acknowledged that participation in the pension system after five (5) years becomes a contractual obligation of the government which may not be disturbed except in the most extraordinary circumstances.

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of Municipalities
407 STATE STREET, TRENTON, NJ 08618

While ILGA is of the opinion that affording pension benefits to its attorneys has worked extremely well for local governments since they have been able to secure high quality public law specialists at very favorable rates, ILGA also recognizes that concerns expressed publicly about size of some of public employee pensions needs to be evaluated in a careful and thoughtful manner.


Accordingly, ILGA recommends that the Governor or the Joint Legislative Committee on Public Employee Benefits Reform appoint a committee to study how benefits of the current system for municipalities can be preserved at the same time the perceived excesses in the system can be eliminated.

There are a number of ways that a fair compromise can be achieved such as a cap on total pension benefits that could be received by any one attorney or public employee. The maximum salary could be tied to some reasonable benchmark such a percentage of a Superior Court Judge's yearly pension or some other reasonable standard.

Other areas of improvement might include a formula that ties in total pension contributions to benefits, and an increase in the minimum salary for participation in the system. Such an approach would address the perceived inequities where a person participates in the pension based on for a very low salary but then substantially increases their pension by securing a high paying job for the last three years of service.

ILGA believes that a committee with representation from the various stakeholders, including ILGA, will be able to evaluate the technical issues involved in pension reform and achieve a fair balance that allows future local government attorneys the option of charging lower than market rates but in return securing the benefits of a pension. Assuming local government attorney participants pay their fair share toward the pension system, just like other public employees, so that the system is fairly funded, there is no reason for them not to participate, particularly if their participation allows municipalities to continue to secure high quality representation at less than market rates. The alternative, barring participation in the pension system may, in the long run, cost local tax payers considerably more by significantly increasing the cost for legal services. The balance, which allows local governments to obtain legal services at less than market rates but provides that all participants fully fund their contribution to the system seems to be the most beneficial outcome.

Very truly yours,


RICHARD P. CUSHING

RPC/mtb

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October 3, 2006

New Jersey State Legislative Joint Legislative Committee on
Public Employee Benefits Reform
State House Annex
PO Box 068
Trenton, NJ 08625-0068

Dear Honorable Members of the Joint Legislative Committee on Public
Employee Benefits Reform:

On behalf of the Institute of Local Government Attorneys ("Institute"), enclosed are two Position Papers that have been prepared by the Institute. The first Position Paper describes the many benefits that have accrued to local municipalities from participation by local government attorneys in the Public Employee Retirement System. The second paper, entitled, *Suggestions for Legislative Reforms for Part Time Employees Enrolled in the Pension System*, describes some potential reforms that could be enacted and suggests that either the Governor or this honorable Committee consider the creation of a subcommittee to evaluate reforms to the current system that will eliminate the excesses that have come to light, but at the same will maintain the benefits to local governments from attorney and part time participation in the pension system.

The Institute believes that such a subcommittee can obtain input from stakeholders, such as the Institute and other groups representing part time employees, as well as technical assistance to craft solutions that will fully fund part time employees' pensions, but will also wring out abuses of the system.

Carl Woodward, a representative of the Institute, appeared to offer testimony at your initial meeting, but, because of the number of persons wishing to offer evidence was not heard. The Institute would like to be able to present, in person, its position to the Committee and looks forward to offering to the Committee whatever technical advice or guidance may be of assistance.

AN AFFILIATE OF **NJLM** New Jersey State League
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407 STATE STREET, TRENTON, NJ 08618

The Institute appreciates all of the time and effort the Committee Members are putting into this process.

Very truly yours,


RICHARD P. CUSHING

RPC:cb

cc: Senator Nicholas P. Scutari
Assemblywoman Nellie Pou
William G. Dressel, Jr., Executive Director, NJ State League of Municipalities

NEW JERSEY INSTITUTE OF LOCAL GOVERNMENT ATTORNEYS



August 2006

THE NEED FOR PENSION EQUITY FOR LOCAL GOVERNMENT LAWYERS

The New Jersey Institute of Local Government Attorneys ("ILGA") believes that participation in the pension system by government lawyers is vital for local governments because it encourages capable lawyers to participate in government service, permits municipalities to obtain high quality legal services at lower than market rates and allows smaller municipalities, authorities and counties to participate in a form of shared services, by jointly engaging local government attorney specialists with those attorneys being encouraged to enter into such an arrangements by the prospect of participation in the pension system.

The benefits of this approach are evident from the reasons the pension system was created and the manner in which local government attorneys have been treated historically by it. The various pensions systems in New Jersey were created as part of efforts by local government to attract and retain a high quality work force. The public pension system provides a societal benefit by providing a secure retirement for public employees who have provided long and loyal service.

The benefits of participation by municipal attorneys, including part time attorneys, in the Public Employees Retirement System ("PERS") has long been recognized. There are many sound reasons why local government attorneys are permitted to participate in that system. From the public entity standpoint, it is usually more advantageous to engage an attorney on a retainer basis rather than on an hourly basis since a salary is frequently lower than what would be charged on an hourly basis. In addition, the salary system provides the government employer with a known amount for the services rendered rather than facing the prospect of unpredictable expenditures resulting in unpleasant surprises at the end of the budget year.

From the attorney's perspective, the pension is a form of delayed compensation. While most municipal attorneys like what they are doing and regard it as a public service, the work by and large pays substantially less than normal hourly rates for comparable legal work. Most attorneys do not have any form of retirement plan other than what they are able to save. The concept of a pension for government lawyers has been for years a way of attracting talented employees who will take less in pay up front with the assurance of other remuneration later on. As a result, a pension, even if it is modest, may be of substantial assistance upon retirement.

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The fact that many municipal attorneys are not full time employees of their government employers is not a valid reason to deny or reduce their pension benefits. Many government employers do not as a rule need, nor can they afford, a full time attorney and, thus, having a part time attorney is a financially sound option. Just as many municipalities have part time judges, engineers, tax assessors, tax collectors, zoning officers and construction officials, attorneys for multiple smaller government units fill a vital role in the increasingly complex field of local government law. Most local governments in New Jersey have moved past the view that their attorney position should be filled by neophyte political appointees. Rather, it has been agreed there is substantial public benefit from recognizing that experience should be sought and properly compensated.

The fact that many smaller governments neither need, nor can afford, a full time attorney supports the concept of "tacking", the practice of aggregating multiple employments into a single pension. PERS has long regarded this as a multiple employment which is specifically permitted under that system. The multiple employment situation has been recognized as both a benefit to the employer, by allowing it to attract the top candidates to a position, even though it is not full time, and to the employee, by permitting a single employee to service several government employers without sacrificing the benefits accorded to full time employees. Denying pensions to part time employees would substantially handicap small governments throughout the state by reducing the pool of potential candidates for many municipal positions, such as tax collector, tax assessor, engineer, judge, code officials and many other part-time officials.

Attorneys are no different from these other part-time government officials. Smaller public entities benefit substantially from employing attorneys who work for several other government agencies. The experience and wisdom gained from the multiple employment allows the government lawyers to more efficiently deliver legal services to each public entity since they experience many of the same issues in each of the towns or authorities. They develop a level of expertise comparable to a full time local government attorney and make that expertise available to each of their clients. Government attorneys are in effect a shared service which through joint use of part-time lawyers allows small governments to benefit by each sharing a attorney who then delivers similar services to each at a reduced cost. For these reasons, it makes sense to encourage experienced government attorneys to participate in the pension program and to permit the tacking of their employment so the part time attorneys can develop pension benefits equivalent to the benefits full time government attorneys receive.

There is no good economic reason to deny to part-time government employees the ability to tack. Multiple employees and their employers make contributions to the pension system for each position held. If forced to choose only one position, then presumably, the other contributions would be lost and the system would have much less in funds to invest and work with. Having two positions at \$40,000.00 each is no different than one position at \$80,000.00. Part-time government lawyers are no different from other part-time government employees in this regard.

Certainly, ILGA does not support abuse of the pension system. Specifically, ILGA is in favor of restricting abuse end of the career salary hikes that represent political pay backs for favored retired politicians and not compensation for long, diligent and honorable public service. ILGA also opposes abuse of sick day pay outs and other devices which permit some government employees, whether part-time or full time, to "game the system".

While ILGA has great respect for the efforts that were put in by those who prepared the Benefits Review Task Force, it believes that those who prepared the report were not really familiar with the vital work done by local government employees, the means by which that work is commonly performed, the benefits enjoyed by small government from multiple employer lawyers and the sacrifices made by them economically in order to assist local government clients. It may be that the small number of prominent abusers of the system, who have received considerable, unflattering public attention, may have been the focus of the task force members and, as a result, they may have overlooked the efforts and benefits of many hard working diligent government attorneys, both full- and part-time. The fact that occasional pension abuses have taken place with regard to both part-time and full-time public employees in no way justifies excluding or restricting an entire class of employees within the system.

Finally, ILGA believes that for both legal and moral reasons, any changes implemented to the pension system should be prospective only; they should not be applied to those who have participated honorably in the pension system for a long period of time.

The law in New Jersey is clear that pension systems may not reduce the benefits for members with more than 5 years service. The moral justification for this is equally clear. Pension members, especially those vested in the system, have come to rely heavily on the fact that the benefits they have been promised will be available when they retire. This is a covenant entered into between government and the employee. Reducing benefits, especially for older workers, leaves them with little choice but to retire at what may be a substantially diminished life style, or to extend their work life beyond what may be reasonable. Government should not renege on its promises to workers.

In sum, the ILGA supports the following principles:

1. Any changes to the pension system should be prospective only and not apply to vested members.
2. Pension benefits should be available to all local government lawyer employees whether vested or not vested and whether new to the system or not. ILGA believes that pension benefits are a strong incentive for young capable attorneys to enter government service and limiting the access of younger attorneys to the pension system will in the long run damage local governments by discouraging talent or will cause them to substantially increase the rates they pay in order to attract talent.
3. Pension benefits should be available for all government lawyer employees, whether part time or full time.
4. Local government attorneys should be permitted to continue to tack their employments for pension purposes. "Tacking" encourages specialization and concentration in municipal law among lawyers who represent smaller municipalities, thereby giving those municipalities a level of legal sophistication equivalent to the state's largest local governments.
5. "Gaming" of the pension system, and other abuses which result in exorbitant pension payouts for part-time or full-time employees not related to long term, diligent and beneficial service should be prohibited.

Hopefully, when these issues are full aired, the misunderstandings created by few unfortunate incidences will not cloud the merits of continuing to permit full time and part time local government officers to participate in or to join the pension system.

Very truly yours,


RICHARD P. CUSHING

RPC/mtb