

Memorandum

State of Alaska

Department of Law

TO: Melanie Millhorn
Director
Division of Retirement & Benefits
Juneau

DATE: May 28, 2004

TEL. NO: 269-5178

AGO FILE: 661-04-0588

SUBJECT: *ASD Service
Recognition Program*

FROM: Toby N. Steinberger
Virginia B. Ragle
Assistant Attorneys General
Labor & State Affairs Section
Anchorage

You have asked for an opinion regarding whether the Anchorage School District's "Service Recognition" award of \$10,000 to a school principal can be included in the principal's "base salary" for determining the principal's monthly benefit under the Teachers' Retirement System (TRS). It is our opinion that the "Service Recognition" cannot be included in the "base salary" because the award is not compensation for services performed by the member during the school year.

According to the information recently provided by the Anchorage School District, a school principal is eligible for a Service Recognition payment in the amount of \$10,000 if the principal completes an application and agrees to terminate employment by the end of the school year. Under the April 8, 2001, Tentative Agreement between the District and the Anchorage Principals' Association (APA), although the \$10,000 is ostensibly paid "in recognition of services performed during the final year of employment," it is only "offered to principals who elect to terminate their employment with the District no later than June 30, 2004."¹ The application form that a principal was required to submit provides that the application is irrevocable and that the principal must terminate before the start of the next school year if selected for the program. The contract addendum that a participating principal was required to sign provides that, if the

¹ The District has not provided us with a copy of a final agreement. We assume that the terms of this tentative agreement are in effect.

principal returns to employment after terminating employment, the principal must re-pay the \$10,000. A letter from the District that was provided to the Division by a retiring principal advises the principal that her application is irrevocable, and that she is required to resign before the start of the next school year.

Alaska Statute 14.25.110 provides that the monthly benefit for a member is based on the member's average base salary. "Base salary" is defined in pertinent part as the "total remuneration payable under contract for a full year of membership service, including addenda to the contract" AS 14.25.220(6). "Membership service" is defined in pertinent part as "full or part-time service as a teacher in a public school" AS 14.25.220(23)(A). The term "teacher" includes principals because they are in certificated positions. AS 14.25.220(42)(A). "Compensation" is defined as "the total remuneration paid under contract to a member for services rendered during a school year . . . but does not include retirement benefits, welfare benefits, per diem, expense allowances, workers' compensation payments, or payments for leave not used by the member" AS 14.25.220(10).

In our opinion, the \$10,000 payment is not compensation for the member's actual service under the contract. The Service Recognition was apparently not offered by the District to recognize or compensate principals for outstanding services during the school year, but was only offered to provide an incentive to principals to retire or terminate. Additionally, the Service Recognition cannot be accurately described as paying compensation to a principal for services performed during the school year since, if the terminated principal returns to work for the District, the principal must repay the \$10,000. The payment does not constitute remuneration for services performed during a school year, but is a payment made by the District as consideration for a principal's retirement or termination of employment. While the contract characterizes the payment as "service recognition," the only consideration required of, and provided by, the principal in exchange for the payment is termination. *See Berry v. Board of Trustees, Maine State Retirement System*, 663 A.2d 14 (Maine 1995) ("earnable compensation" with respect to calculating retirement benefits does not include incentives to retire because it is not for services rendered).

Additionally, by defining "compensation" to not include items such as payments for expense allowances and payments for leave, the legislature intended to limit the burden on the retirement system, which must be funded to pay the continuing retirement benefits. Allowing a retirement incentive to be included in a member's base salary calculation will clearly burden the retirement system which will pay benefits to a

member for many years.² *See Boston Assoc. of School Administrators and Supervisors v. Boston Retirement Board*, 419 N.E. 2d 277 (Mass. 1981).

In summary, the Service Recognition payment is accurately described as an incentive to retire (or terminate employment) and to stop rendering “services.” It is not remuneration for services rendered during a school year. Therefore, it cannot be included in calculating a member’s base salary.

TNS/kmh

² Unlike retirement incentive programs that have been authorized by the legislature, use of this kind of incentive to manipulate TRS benefits is not contemplated in the actuarial funding of TRS, and results in unfunded liability that must be picked up by all TRS employers.