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OPINION NO. 2015-04

RETIREES; HEALTH; EMPLOYMENT:

The extension of state retiree health benefits eligibility in section 1 of Senate Bill 513 (2015) to persons returning to State service applies regardless of whether the person was in the Public Employees' Retirement System covered employment with another entity during the break in State service.

Ms. Kateri Carraher
Interim Executive Officer
State of Nevada
Public Employees' Benefits Program
901 S. Stewart Street, Suite 1001
Carson City, Nevada 89701

Dear Ms. Carraher:

You have requested an opinion from the Office of the Attorney General concerning section 1 of Senate Bill (S.B.) 513 (2015). Section 1 of S.B. 513 extends eligibility for retiree health benefits to any person who (1) was employed by the State on or before January 1, 2012, (2) subsequently left State service, and then (3) returned to work for the State, (4) so long as he or she has not withdrawn from the Public Employees' Retirement System ("PERS") and (5) was eligible to participate in PERS before or during his or her break in State service. You ask whether that extension of eligibility applies to a person who was, during the break in State service, employed in PERS-covered employment with another entity (such as a municipality).

QUESTION PRESENTED

Is the extension of state retiree health benefits eligibility in section 1 of S.B. 513 applicable to a person who, during time away from State employment, was in PERS-covered employment with another entity?

SUMMARY ANSWER

The extension of state retiree health benefits eligibility in section 1 of S.B. 513 applies regardless of whether the person was in PERS-covered employment with another entity during the break in State service.

ANALYSIS

The Legislative Counsel's Digest in S.B. 513 prefaces the law prior to its enactment as follows:

Until 2011, existing law provided for a subsidy to be paid on behalf of retirees who continued to participate in the Public Employees' Benefits Program. Existing law creates the State Retirees' Health and Welfare Benefits Fund which was created to set aside financial assets designated to offset the amount paid for such benefits. (NRS 287.0436, 287.04364) In 2011, the Legislature amended provisions of existing law to exclude employees of the State who were initially hired on or after January 1, 2012, from receiving a subsidy . . . By regulation, the Board of the Public Employees' Benefits Program has defined the term "initial date of hire" to mean the first date on which a person who is eligible to participate in the Program earns service credit during the person's last period of continuous employment with a public employer. (NAC 287.059) The term "continuous employment" is defined by regulation as employment that is not interrupted by a break of 1 year or more. (NAC 287.021) Therefore, a person who worked as an employee of the State for many years before January 1, 2012, who has a break in service of longer than 1 year and then returns to work in state government will lose any subsidy that would have otherwise been paid, on behalf of the person when he or she retires, had the person not returned to state government employment.

Act of July 1, 2015, ch. 483, 2015 Nev. Stat. ____.

Under the law before enactment of S.B. 513, a person who worked in State employment but left for a year, returning after January 1, 2012, would not be eligible for a health care subsidy from PEBP.

Against the above backdrop, Section 1 of S.B. 513 made the following changes to NRS 287.046 concerning availability of retiree health benefits for State employees (new language in bold and italics, deleted language bracketed):

1. The Department of Administration shall establish an assessment that is to be used to pay for a portion of the cost of premiums or contributions for the Program for persons who were initially hired before January 1, 2012, and have retired with state service.

2. The money assessed pursuant to subsection 1 must be deposited into the Retirees' Fund and must be based upon a base amount approved by the Legislature each session to pay for a portion of the current and future health and welfare benefits for persons who retired before January 1, 1994, or for persons who retire on or after January 1, 1994, as adjusted by subsection 5.

.....

7. **[No] Except as otherwise provided in subsection 8, no** money may be paid by the Retirees' Fund on behalf of a retired person who is initially hired by the State:

(a) On or after January 1, 2010, but before January 1, 2012, and who:

(1) Has not participated in the Program on a continuous basis since retirement from such employment; or

(2) Does not have at least 15 years of service, which must include state service and may include local governmental service, unless the retired person does not have at least 15 years of service as a result of a disability for which disability benefits are received under the Public Employees' Retirement System or a retirement program for professional employees offered by or through the Nevada System of Higher Education, and has participated in the Program on a continuous basis since retirement from such employment.

(b) On or after January 1, 2012. The provisions of this paragraph must not be construed to prohibit a retired person who was hired on or after January 1, 2012, from participating in the Program until the retired person is eligible for coverage under an individual medical plan offered pursuant to the Health Insurance for the Aged Act, 42 U.S.C. §§ 1395 et seq. The retired person shall pay the entire premium or contribution for his or her participation in the Program.

8. *The provisions of subsection 7 do not apply to a person who was employed by the State on or before January 1, 2012, who has a break in service and returns to work for the State at the same or another participating state agency after that date, regardless of the length of the break in service, so long as the person did not withdraw from and was eligible to participate in the Public Employees' Retirement System before or during the break in service.*

.....

Act of July 1, 2015, ch. 483, 2015 Nev. Stat. ____.

Applicable Rules of Legislative Interpretation

The Nevada Supreme Court has repeatedly stated the rule that a statute whose meaning is plain on its face requires no construction:

When interpreting a statute, legislative intent "is the controlling factor." The starting point for determining legislative intent is the statute's plain meaning; when a statute "is clear on its face, a court cannot go beyond the statute in determining legislative intent." But when "the statutory language lends itself to two or more reasonable interpretations," the statute is ambiguous, and we may then look beyond the statute in determining legislative intent.

State v. Lucero, 127 Nev. Adv. Op. 7, 249 P.3d 1226, 1228 (2011) (citations omitted).

Under this interpretative rule, the first task is to determine whether NRS 287.046 as amended is clear on its face concerning which classes of persons returning to State service may be eligible for the State retiree health benefit. A person meets the necessary conditions to qualify if he or she (1) was employed by the State on or before January 1, 2012, (2) has a break in service and (3) returns to work for the State at the

same or another participating state agency after that date, and (4) did not withdraw from and (5) was eligible to participate in the Public Employees' Retirement System before or during the break in service.

The question then is whether these five criteria could reasonably be read to exclude from eligibility a person who has a break in State service and goes to work for another PERS-participating employer. The answer turns on the meaning of break in service (criteria 2) and eligibility to participate in PERS during the break (criteria 5).

The ordinary meaning of the term "break in service" from its context in NRS 287.046(8) is a break in employment with the State. "Break in service" is preceded and followed in the same sentence by references to employment with the State. The break in service begins after employment with the State that commenced before January 1, 2012, and ends on resumption of employment with the State after January 1, 2012. It is not contextually related to any other condition or event.

The question is then whether "break in service" as it appears in NRS 287.046(8) could reasonably be read to exclude a "break in service" in which the person takes employment with another PERS-participating entity. The answer is no, for two reasons.

First, in no way is the criterion "break in service" qualified by any limitation on PERS employment with non-State employers during the break. Second, the statutory language anticipates that an eligible person may have been "eligible to participate in the Public Employees' Retirement System before or during the break in service." (Emphasis added.) This clear text forecloses any interpretation that would exclude eligibility merely because a person worked for a PERS-participating employer while on break from State service.

"Eligible to participate in PERS" is not a defined term in either NRS Chapter 286 (the PERS chapter) or 287 (the PEBP chapter). However, examining the possible alternative meanings of that phrase, they are clear and consistent in the essential point at issue herein. Whether the phrase "eligible to participate in [PERS] during the break in service" is interpreted to mean (1) employed in a position covered by PERS,¹ (2) "member" as defined in NRS 286.050,² or (3) "vested,"³ any of these meanings

¹ See NRS 286.520 (referring to a retired employee who "*is employed in a position which is eligible to participate in this System.*") (Emphasis added.)

² "Member" is defined in NRS 286.050 and includes as one of its options current employment with a PERS-participating entity. "'Member' means a person: 1. Who *is employed by a participating public employer and who is contributing to the System*; or 2. Who has previously been in the employ of a participating public employer and who has contributed to the System but who subsequently terminates such employment without withdrawing the person's contributions." (Emphasis added.)

Kateri Carraher, Interim Executive Officer
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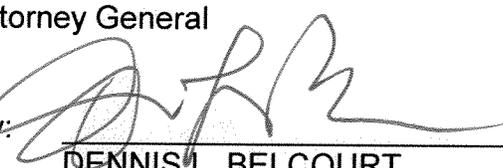
would include employment by other PERS-participating employers during the employee's break in State service. Thus, the clear text of Section 1 of S.B. 513 contemplates that a person who holds PERS-covered employment for an entity other than the State during a break in service from the State could be eligible for drawing the retirement health benefit on subsequent retirement from State service. In short, the plain meaning of Section 1 of S.B. 513 is that a person otherwise eligible for the PEBP retiree health benefit may be eligible for that benefit notwithstanding a break in State service during which that person worked for another PERS-participating entity.⁴

CONCLUSION

The Public Employees' Benefits Program provides a retiree health benefit to eligible persons that is not available to persons whose initial date of hire was on or after January 1, 2012. NRS 287.046. Section 1 of S.B. 513 amended NRS 287.046 to provide that a person who was employed in State service on or before January 1, 2012, and experienced a break in State service lasting until on or after January 1, 2012, may be eligible for PEBP's retiree health benefit, regardless of whether such person was employed by another PERS-participating entity during the break in State service.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: 

DENNIS L. BELCOURT
Deputy Attorney General
Government and Natural Resources

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³ Under NRS 286.6793, a PERS member active after July 1, 1989 may vest upon obtaining five years of accredited contributing service. Credit for service may be based on work performed. NRS 286.495. In other words, if "eligible for participation in" PERS equates to "vesting," one way to become eligible for participation in PERS during a break from State service is by performing covered work for another PERS-participating entity.

⁴ As of the writing of this opinion, the minutes of legislative hearings on S.B. 513 have not been published. From the audio recordings of those hearings it appears that testimony before the Senate is consistent with the plain meaning of S.B. 513, but testimony in the Assembly, after Senate passage, by a legislative staff member, contradicts that meaning. As the statute has a plain meaning, the rule, stated in *Lucero, supra*, against looking beyond the unambiguous words of a statute to discern legislative intent precludes any reliance on that testimony.