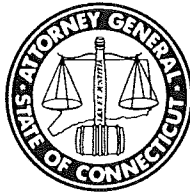


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Office of The Attorney General  
**State of Connecticut**

March 19, 2012

The Honorable John McKinney  
Senate Minority Leader  
28<sup>th</sup> District  
Legislative Office Building, Suite 3400  
Hartford, CT 06106-1591

Dear Senator McKinney:

You have requested this Office's opinion regarding whether the State Teachers' Retirement Board ("Board") possesses the legal authority to "bill" a member of the Teachers' Retirement System ("System") both for missing contributions and interest due on those contributions. In addition, you have inquired whether the Board may require the member's former employer to compensate the member for any interest charges related to these missing contributions, given the employer's statutory duty to deduct and remit such contributions to the Board on behalf of the member.

We conclude that although the Board may perhaps not automatically "bill" the member, it is authorized statutorily to notify a member regarding missing contributions and interest. Moreover, with respect to contributions never withheld by a member's employer, we conclude that in the circumstance you describe the Board does not have the statutory authority to require the member's former employer to compensate the member for interest charges, or to assess a penalty on an employer for its failure to withhold mandatory contributions.

The information provided with your request describes a circumstance in which the Board recently notified a member of the System that certain contributions for a limited period in 1999 had not been deduct by the member's employer or remitted to the Board. In addition, you indicate that the Board notified the member of interest due on the missing 1999 contributions. Your letter indicates that if the member were to now remit the contributions to the System with interest, the interest would equal twice the amount of the actual contributions owed.

To answer your inquiries it is necessary to review the entire statutory scheme of Chapter 167a of the Connecticut General Statutes and its implementing regulations. Foley v. State Elections Enforcement Commission, 297 Conn. 764,

possible”). “The meaning of a statute shall . . . be ascertained from the text of the statute itself *and its relationship to other statutes.*” (Emphasis added) Conn. Gen. Stat. §1-2z. If the “meaning” of the “text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.” *Id.* If, on the other hand, the statutory language is ambiguous, we may analyze extratextual sources, such as legislative history. *Bennett v. New Milford Hospital, Inc.*, 300 Conn. 1, 26 (2011).

Your inquiry first requires us to examine Conn. Gen. Stat. § 10-183b(7), which provides in relevant part that “[c]ontributions’ means amounts withheld pursuant to this chapter and paid to the board by an employer from compensation payable to a member,” and that “mandatory contributions’ are contributions required to be withheld under this chapter.” The Board’s implementing regulations provide that “[a] person who is a member in the State Teachers’ Retirement System *shall make mandatory contributions*” and further that “[a] member shall receive a month of credit for each month of service . . . *for which mandatory contributions are made . . .*” (Emphasis added) Regs., Conn. State Agencies § 10-183l-22 (b) & (c). Thus, clearly for a member of the System to receive retirement credit, contributions from his or her compensation must be remitted to the Board.

Although the legislature has placed the burden of deducting and remitting these “mandatory contributions” upon the member’s employer; Conn. Gen. Stat. § 10-183n(a);<sup>1</sup> as set out in the immediately preceding paragraph, without those mandatory contributions, the member is not credited with the service. Moreover, although it is clear from the general statutes that once the employer deducts the contributions from the employee, those “amounts shall at all times be the property of the system” and the employer may be liable for interest at 9% per year if those amounts are not forwarded to the system; Conn. Gen. Stat. § 10-183n(b); the statutes do not address the situation in which the employer has *failed* to deduct those contributions. We therefore cannot conclude that the Board has the authority to bill the employer for contributions it **did not** withhold – and that the member therefore retained -- even if it should have.

Rather, it appears that in the situation you describe, the member would have a choice: to either forego the credit for the months during which the System did not receive mandatory contributions from him or her, or to pay the System for the missing contributions with interest. This conclusion is supported by a reading of Conn. Gen. Stat. § 10-183ff, which provides in relevant part that “[s]hould any change in records result in any member . . . receiving from the teachers’ retirement system more or less than he would have been entitled to receive . . . *then upon discovery . . . the Teachers’ Retirement Board shall notify the member . . . affected and correct the same . . .*” (Emphasis added) In this

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<sup>1</sup> Section 10-183n(a) provides in relevant part that “[e]ach employer shall . . . deduct each month seven and one-fourth per cent of one-tenth of such teacher’s annual salary rate as directed by said board and any additional voluntary deductions as authorized by such teacher . . . .”

situation, the “change in records” would stem from the Board’s determination that certain contributions had not been remitted, and would result in the member receiving **less** than he or she “would have been entitled to receive” if the contributions had been received and credited. Thus, the Board is obliged to notify the member “affected and correct the same”<sup>2</sup> in this instance because mandatory contributions were not made in 1999, and his or her benefits would be affected.

The second part of your inquiry concerns whether the Board may require an employer to pay the interest charges that have accrued on the mandatory contributions the employer failed to deduct. Conn. Gen. Stat. § 10-183b(8) provides in part: “[C]redited interest shall be assessed on any mandatory contributions which were due but not remitted prior to the close of the school year for which salary was paid.”<sup>3</sup>

Again, we find no authority for the Board to require the employer to pay this interest. Our conclusion is buttressed by the fact that the legislature has obligated the employer to pay interest on amounts it has deducted from the employee’s compensation and failed to forward to the System, but it has not obligated the employer to pay interest in the situation you describe. Specifically, should an employer deduct the mandatory contribution from a member’s salary, but “such amounts are not accompanied by the reports and information deemed necessary or desirable by the board for the proper administration of the system . . . the board may deem such amounts not received . . . until the date on which such reports and information are received. ***Said board shall be entitled to receive from an employer interest*** at the rate of nine per cent per year from the due date ***on all amounts deducted by such employer and not received by said board*** by the fifth business day of the following month.” (Emphasis added) Conn. Gen. Stat. § 10-183n(b). The statute, is silent, however, with respect to any course of action the Board may take against the employer regarding interest should it fail to deduct the mandatory contribution from the member’s compensation. See Colangelo v. Heckelman, 279 Conn. 177, 191 (2006) (citing rule of statutory construction *expressio unius est exclusio alterius*, or “the expression of one thing is the exclusion of another”).

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<sup>2</sup> Although we conclude that the language of § 10-183ff is plain and unambiguous with respect to permitting the Board to directly notify a member regarding their benefits, further support for our conclusion is found in the legislative history surrounding P.A. 83-397. Specifically, Senator O’Leary explained that “the bill as amended will provide a structure for correcting errors and benefit payments which result from changes or errors in the teacher’s retirement board records. Once discovered, ***the member . . . will be notified*** and the overpayment or ***underpayment will be corrected*** where practical by adjusting future payments ***so that the actuarial [sic] value of the proper benefit will be paid.***” (Emphasis added) 26 Senate Proc., 1983 Sess., pp. 3317-19 (May 31, 1983) (remarks of Sen. O’Leary). Thus, the Legislature clearly intended that the Board notify the member directly in this instance because the member’s benefit could be affected by the missing 1999 contributions.

<sup>3</sup> Conn. Gen. Stat. § 10-183b(8) further defines “[c]redited interest” to mean “interest at the rate from time to time fixed by the board consistent with industry standards and practices.”

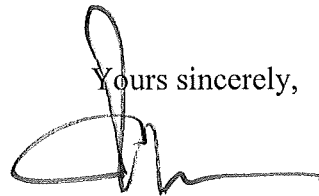
In addition, there is no statutory provision in Chapter 167a that authorizes the Board to assess a fee or penalty on an employer regarding its failure to deduct a mandatory contribution. Therefore, absent express statutory language authorizing the Board to “bill” the employer for interest on missing contributions, or to penalize the employer for its failure to deduct a contribution, such a construction cannot be read into Chapter 167a. See Connecticut Light & Power Co. v. Dept. of Public Utility Control, 266 Conn. 108, 119 (2003) (courts “are not permitted to supply statutory language that the legislature may have chosen to omit”).

It is also noteworthy that the legislature has provided for several ways to correct errors concerning a member’s records or adjusting a member’s benefits, including situations in which the Board has some discretion with respect to correcting such errors. See, e.g., Conn. Gen. Stat. §§ 10-183ff(b)(repayment for overpayment may be waived if Board believes it “would cause hardship); 10-183ff(c)(Board shall refund contributions and interest for erroneous inclusion of a person in System); 10-183ff(e)(member afforded opportunity to purchase credit with interest if erroneously invoiced previously); 10-183ff(f)(Board shall pay member as reflected in erroneous estimate of benefits if member resigned in reliance on the estimate and could not reasonably have detected error). From the facts provided we are unable to opine on whether any of those statutory avenues might be available to the member or might result in any relief.<sup>4</sup> However, in light of the fact that the legislature has addressed the correction of certain types of errors, the fact that it has failed to do so in this context further supports our conclusions. Id.

Thus, we conclude that the Board was authorized to notify the member directly regarding missing 1999 contributions and interest due. In addition, we conclude that there is no statutory authority for the Board to “bill” the member’s former employer for interest on mandatory contributions that were not withheld from the member’s compensation in 1999.

We trust that we have answered your questions.

Yours sincerely,



GEORGE JEPSEN

GJ/KDO/gr

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<sup>4</sup> Also, we can offer no opinion on whether the member might have a cause of action against the former employer under any theory. Rather, we must confine our opinion to the obligations of the Board and the rights of the member and the employer before the Board.