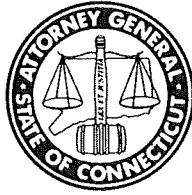


GEORGE C. JEPSSEN
ATTORNEY GENERAL



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P.O. Box 120
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Office of The Attorney General
State of Connecticut

July 29, 2011

Ms. Darlene Perez
State Teachers' Retirement Board
765 Asylum Avenue
Hartford, CT 06106

Dear Ms. Perez:

You have inquired of our office whether a member of the of the State Teachers' Retirement Board ("the Board") who was elected as an active teacher, but retires midterm, may complete his or her term on the Board. You indicate that the current practice of the Board is that when an active teacher retires midterm, he or she is permitted to complete the term. We conclude that an active teacher who retires may no longer maintain his or her position on the Board, and the retirement creates a vacancy the Board is statutorily empowered to fill.

To answer your question, we must examine §10-183/(a) of the Connecticut General Statutes to determine whether a teacher's "active" versus "retired" status impacts that teacher's status on the Board. Conn. Gen. Stat. § 10-183/(a) provides in relevant part that:

[T]he members of the system shall elect from their number . . . two persons to serve as members of said board for terms of four years ***Both of such persons shall be active teachers*** who shall be nominated by the members of the system who are not retired and elected by all the members of the system. . . . [T]he members of the system shall elect from their number . . . three persons to serve as members of said board for terms of four years ***Two of such persons shall be retired teachers*** who shall be nominated by the retired members of the system and elected by all the members of the system and ***one shall be an active teacher*** who shall be nominated by the members of the system who are not retired and elected by all the members of the system.

July 29, 2011

Ms. Darlene Perez

Page 2

(Emphasis added.) While the statute plainly requires that the Board shall consist of three “active teachers” and two “retired teachers,” it does not make clear whether the three active teachers must only be active when elected, or must remain active while holding one of the positions designated for active teachers.

We approach this question first by looking to the rest of the text of the statute for guidance. Foley v. State Elections Enforcement Commission, 297 Conn. 764, 793 (2010) (statutes must be read as a whole “so as to reconcile all parts as far as possible”). For example, Conn. Gen. Stat. § 10-183/(a) further provides that “[i]f a vacancy occurs in the positions filled by the members of the system who are not retired, said board *shall elect a member of the system who is not retired* to fill the unexpired portion of the term.” (Emphasis added.) Similarly, the statute provides that “[i]f a vacancy occurs in the positions filled by the retired members of the system, *the board shall elect a retired member of the system* to fill the unexpired portion of the term.” (Emphasis added.) These parts of the statute connote an intention to maintain the legislatively prescribed balance in the Board’s membership when vacancies arise. The statute, however, does not directly address whether a “vacancy” occurs when a member of the Board elected as an “active teacher” retires before his or her term on the Board has expired.

When a statute does not provide a plain or unambiguous answer, courts look to the statute’s purpose, legislative history and particular context to ascertain its meaning. See Viera v. Cohen, 283 Conn. 412, 420–21 (2007). Here, to administer the State’s Teachers’ Retirement System, the legislature has purposefully directed – and from time to time altered -- a certain composition of Board members, including some active and some retired teachers. This intention is evidenced by the fact that the Legislature has at least twice amended the statute to change the make-up of the Board’s membership.

For example, in 1984 the Legislature amended Conn. Gen. Stat. § 10-183l to specify that there must be three (3) active teachers and one (1) retired teachers serving on the Board. Until that time, only active teachers were represented on the Board. See Conn. Gen. Stat. § 10-183/ See 1983 Conn. Pub. Acts No. 83-533 §43. (Rev. to 1983). When the state senate discussed this bill, Senator Daniels explained: “What this bill does is simply adds one more person to the Teachers’ Retirement Board, and it specifically states that that person should be in a retired capacity or a retired teacher.” 27 Conn. S. Proc., pt. 3, 1984 Sess. 1088–89 (April 11, 1984) (remarks of Sen. Daniels). Thus, the 1984 amendment ensured that retired teachers would be represented on the Board, along with active teachers. See 1984 Conn. Pub. Acts No. 84-207. See P.A. 84-207. In 1991, the Legislature

again altered the makeup of the Board's membership, increasing the number of public members appointed by the Governor from five (5) to (6) six, and increasing the number of retired teachers on the Board from one (1) to two (2). See 1991 Conn. Pub. Acts No. 91-188.

In our view, the Board's policy of permitting Board members elected as active teachers to remain on the Board when they become retired teachers is inconsistent with the specific direction the legislature has provided regarding the Board's composition. The Board is presently composed of two ex-officio members, six public members, three active teachers and two retired teachers. In light of the statutory language regarding how many seats on the Board shall be held by active and by retired teachers, we conclude that an active Board member who retires midterm relinquishes his or her seat on the Board. Once the Board member retires, a vacancy arises and the Board "shall elect a member of the system who is not retired to fill the unexpired portion of the term." C.G.S. §10-183l(a).

In a prior opinion, this office recognized the state's strong interest in retaining the statutory composition of another administrative body, the Waterbury Financial Planning and Assistance Board. Conn. Op. Atty. Gen. 04-008 (July 2, 2004). By Special Act 01-1, the Connecticut General Assembly created the Waterbury Board to provide oversight to the city's financial activities in an effort to achieve economic stability. The Special Act provided that the Board shall consist of seven members, one of whom must be the chief executive officer of a bargaining unit for employees of the city.¹

This office concluded that the CEO of the Waterbury Teacher's Association, and current member of the board, could not retain his seat if he retired from his CEO position. We opined that the General Assembly took pains to specify the composition of the board, and that it clearly intended for certain groups, such as unions, to be represented. Based on this legislative intent, we determined that one member of the Waterbury Financial Planning and Assistance Board must be the CEO of an employee bargaining unit. Therefore, a retirement of the CEO of the union created a vacancy because the retired CEO could not continue to serve as a board member.

¹ Special Act 01-1 (stating that the board shall consist of the Secretary of Office of Policy and Management, the treasurer, the mayor of Waterbury, and "four members appointed by the Governor, one of whom shall be a resident of the city of Waterbury, one of whom shall be affiliated with a business located in the city, one of whom shall have an expertise in finance and one of whom shall be the chief executive officer of a bargaining unit representing employees of the city").

July 29, 2011

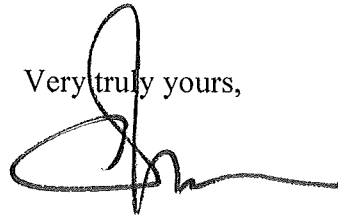
Ms. Darlene Perez

Page 4

Your question raises a similar situation. In both cases, the legislature intended to maintain a certain composition of members on a board. Just as the Waterbury Financial Planning and Assistance Board was required to have one member who is the CEO of an employee bargaining unit, so the Teachers' Retirement Board must have two retired teachers and three active teachers.

Thus, we conclude based on current law that the retirement of an active teacher on the Board creates a vacancy. The retired member may not complete his or her term, and the Board shall "elect a member of the system who is not retired to fill the unexpired portion of the term." C.G.S. §10-183l(a).

Very truly yours,

A handwritten signature in black ink, appearing to read "George Jepsen", written over the closing text.

GEORGE JEPSEN
ATTORNEY GENERAL