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SPRINGFIELD

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FILE NO. S-1061

PENSIONS:

Request for Creditable Service as
a Police Magistrate by a Member of
the General Assembly Retirement
System

Honorable Louis F. Capuzi
Acting Chairman
General Assembly Retirement System
516 Iles Park Place
Springfield, Illinois 62718

Dear Senator Capuzi

I have the letter from the Board of Trustees of
the General Assembly Retirement System which states in part:

The General Assembly Retirement System is in receipt of a request from a member of the General Assembly who served as a police magistrate with no pension credit for approximately 8 years to establish 4 years of such service as credit in the system.

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* * * The System's administrative staff questioned whether this member could specify the amount of such credit to be established in the General Assembly Retirement System or must the entire period but not more than 6 years be considered for credit and contribution purposes.

The Board of Trustees of the General Assembly Retirement System requests your opinion as to whether or not a member with 6 or more years of service involved in Sec. 2-110, paragraph (d), can specify a lesser period for credit in the System."

Section 2-110 of the Illinois Pension Code (Ill. Rev. Stat. 1975, ch. 108 1/2, par. 2-110) defines "service" for the purposes of the General Assembly Retirement System. Public Act 79-903 expanded the definition of "service" by adding subsection (d) to section 2-110. That subsection as added by Public Act 79-903 reads as follows:

"(d) Service rendered prior to January 1, 1964, as a justice of the peace or police magistrate or as a civil referee in the Municipal Court of Chicago, but credit for such service may not be granted to a member until he has paid into the System an amount equal to (a) contributions at the rate in effect for participants at the date of membership in this System based upon the salary then in effect for members of the General Assembly, (b) the funded cost for the State of Illinois, in effect at such date, and (c) interest at 6% per annum, compounded annually, from the date of membership to the date of payment by the member, provided that no member may receive more

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than 6 years of credit for such service, nor may any member receive credit under this paragraph for service for which credit has been granted in any other public pension fund or retirement system in the State by whatever name called." (emphasis added.)

The plain intent of Public Act 79-903 was to enable members of the General Assembly to receive service credit for the time they served as justices of the peace or police magistrates or as civil referees. Public Act 79-903 thus permits General Assembly members to increase their creditable service. Members who served as justices of the peace or police magistrates, or as civil referees are not forced to add to their time of creditable service. Rather, members are free to evaluate their retirement needs and to decide whether they require additional service credit.

Pension laws should be liberally construed to effectuate their purpose and in favor of those intended to be benefited. (Gloss v. Bd. of Trustees, 132 Ill. App. 2d 736.) The opportunity to increase service credit that Public Act 79-903 created benefits present and future General Assembly members who have served as justices of the peace or police magistrates or as civil referees. The salutary purpose of this opportunity would be frustrated by a construction that would force members

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who choose to accept credit for prior service to receive and pay for six years of prior service. Some members may not want credit for all six years of prior service. These members would be presented with the dilemma of choosing either to pay for creditable service they do not want or to receive no credit for prior service. This dilemma is contrary to the purpose of Public Act 79-903. The rule of liberal construction of pension laws requires that members who have served six or more years as justices of the peace or police magistrates or as civil referees should be able to pay for and receive a service credit of less than six years. The assistance offered to members by Public Act 79-903 would be lessened by construing the Act in terms of an all or nothing choice.

Language similar to the phrase "no more than six years" has been held not to connote any requirement of a minimum number. (People v. Moses, 288 Ill. 281; Wilson v. Crews, 160 Fla. 169, 34 So. 2d 114.) The six year provision in Public Act 79-903 sets a maximum number of years that can be credited as prior service. There is no implication that members who served six or more years as justices of the peace or police magistrates or

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as civil referees are compelled to receive six years of credit. The function of the six year maximum is to limit the amount of prior service that can be credited to a member. The legislature determined that six years service as a justice of the peace or police magistrate or as a civil referee is the maximum amount of time that could be credited. A member's decision to pay for and receive less than six years of creditable prior service does not challenge that legislative determination.

The intent and the language of Public Act 79-903 do not prevent a participant in the General Assembly Retirement System from requesting credit for less than six years of prior service. It is, therefore, my opinion that a member of the General Assembly who served six or more years as a justice of the peace or police magistrate or as a civil referee may establish less than six years credit for such service.

Very truly yours,

A T T O R N E Y G E N E R A L