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ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

November 22, 1976

**FILE NO. S-1187**

**PENSIONS:**

**Whether Pregnancy is  
Disability Under Section  
14-162 of Pension Code**

**Michael L. Mory  
Secretary, State Employees'  
Retirement System of Illinois  
1201 South Fifth Street  
Springfield, Illinois 62706**

**Dear Mr. Mory:**

**I have your letter concerning the granting of  
ordinary disability benefits to members of the State Employees'  
Retirement System of Illinois who are pregnant, wherein you  
ask the following questions:**

- 1) Are normal pregnancy and "complications"  
of pregnancy to be included as disabilities  
within Section 14-162 of the Illinois Pension  
Code and therefore extended disability coverage  
under the statute?**

Michael L. Mory - 2.

2) If this condition is to be a covered disability under the statute, what guidelines are to be employed by this System in determining the period of time of disability both before and after childbirth?

3) If pregnancy is to be considered a covered disability under the disability statute, what guidelines are to be employed by this System in determining what conditions are "complications" of pregnancy in extending further disability benefits?

Section 14-162 of the Illinois Pension Code (Ill. Rev. Stat. 1975, ch. 108 1/2, par. 14-162) sets forth the manner in which a System member becomes eligible for ordinary disability benefits in pertinent part as follows:

"A member with at least 1 1/2 years of creditable service may be granted an ordinary disability benefit, if:

(1) application for the benefit is made to the system by the member in writing after the commencement of disability;

(2) he is found upon medical examination to be mentally or physically incapacitated to perform the duties of his position; and

(3) he has been granted a leave of absence for disability at the time of commencement of disability. Renewal of a disability leave of absence shall not be required for the continued payment of benefits.

\* \* \*

(emphasis added.)

Michael L. Mory - 3.

Section 14-162 states that a member shall be considered disabled as follows:

"A member shall be considered disabled only when the board has received:

(a) a written certificate by at least 2 licensed and practicing physicians designated by the board, certifying that he is disabled and unable properly to perform the duties of his position at the time of disability;

(b) a written statement from the department in which the member was employed, certifying that he is disabled and unable to perform the duties of his position as a consequence thereof; and

(c) the employee certifies that he is not and has not been engaged in gainful employment."

As stated in paragraph (a), in order for a member to be considered disabled the Board of Trustees of the System must receive a certification of the member's disability from two physicians. When a meaning is attributed to a word and it again appears in the same statute it should be given a consistent meaning unless a contrary legislative intent is clearly expressed. (Chapman v. County of Will, 55 Ill. 2d 524.) The disability certified to by the physicians logically refers to the disability that is established by

Michael L. Mory - 4.

the medical examination provided for in paragraph (2) of section 14-162. According to paragraph (2), disability is established when a member is found to be "mentally or physically incapacitated to perform the duties of his position". It must be concluded that the legislature intended that a System member is to be considered disabled when the board receives certification that he or she is incapacitated to perform the duties of his or her position.

An administrative body has only those powers granted to it by statute (People ex rel. Thompson v. Property Tax Appeal Bd., 22 Ill. App. 3d 316). Because the legislature has determined that a member is disabled when he or she is unable to perform his or her duties due to a mental or physical incapacity, the board is without authority to exclude pregnancy from the conditions that can result in incapacitating a member. Therefore, in response to your first question, it is my opinion that pregnancy can be a disability under section 14-162. If a System member is incapable of performing the duties of her position because of her pregnancy, she may apply for and receive disability benefits if she is also otherwise eligible.

Michael L. Mory - 5.

In response to your second and third questions, I can give no more definite guidelines than those provided in section 14-162. A disability is a condition that incapacitates a member. The length of disability depends on the facts of each case. In determining the length of disability the board must consider the member's health and the duties of the member's position. In one case, a member may be incapacitated for only a short time by a pregnancy. In another case, a pregnancy may result in an extended period of incapacity to perform the duties of the member's position. Thus, in determining whether to grant a disability benefit to a pregnant member, the board should use the same guidelines that it uses in deciding to grant benefits for other disabilities. Assuming that the member is otherwise eligible, benefits may be granted as long as she is incapacitated by the pregnancy.

It should be noted that Federal Courts in four Circuits have held that the denial of disability benefits to pregnant employees violates Title VII of the Civil Rights Act of 1964 (Gilbert v. General Electric Company, 519 F. 2d

Michael L. Mory - 6.

661 (4th Cir. 1975), cert. granted, 423 U.S. 822 (1975); Wetzel v. Liberty Mutual Insurance Co., 511 F. 2d 199 (3d Cir. 1975), vacated, 424 U.S. 737; Holthaus v. Compton & Sons, Inc., 514 F. 2d 651 (8th Cir. 1975); Communications Workers of America, et. al. v. American Telephone and Telegraph Co., 513 F. 2d 1024 (2d Cir. 1975)). These courts have ruled that Title VII prohibits employers from treating pregnancy differently than other disabilities. As a result, Title VII prevents employers from excluding pregnancy from their disability benefit plans.

It is my opinion that section 14-162 prevents the Board of the State Employees' Retirement System from treating pregnancy differently than other disabilities. The test for granting disability benefits to a System member is simply whether the member is incapable of performing his or her duties. Pregnancy is not excluded as a disability for which benefits are provided under section 14-162. Therefore, the Board has no basis for excluding a person disabled by pregnancy from disability benefits.

Very truly yours,

A T T O R N E Y   G E N E R A L