

(Corrected May 6, 1982)

M E M O R A N D U M

May 5, 1982

TO: County Council

FROM: Andrew Mansinne, Jr., Director  
Office of Legislative Oversight

SUBJECT: Current Interpretation of the Retirement System  
Legislation

1. Purpose. To apprise the Council of a current interpretation of the retirement law concerning discontinued service pensions and disability retirement pensions for employees enrolled in the County Government's Integrated Retirement Plan.

2. References. The County Government Employees' Retirement System, Article II, Sections 33-34 to 33-57, Montgomery County Code, 1972, as amended.

3. Background.

a. Effective July 1, 1978, the Employees' Retirement System was modified to provide that all members enrolled after that date would be in an Integrated Retirement Plan. A member enrolled prior to July 1, 1978, would remain in the Optional Retirement Plan unless the member elected to convert to the Integrated Retirement Plan. If a member converts to the Integrated Retirement Plan, he/she would receive a refund of half the member's annual contribution to the retirement system to the limit of the annual Social Security base for each year in the retirement system.\*

b. The principal differences in the two plans for the employee are in the member's contribution while employed and the subsequent pension received after retirement:

(1) Optional Retirement Plan. Provides for contributions to, and benefits from, the retirement system independent of the Social Security System. While actively employed, the member contributes the full

\*Example: A member in Group A who converts would receive a refund of \$972 for 1982, \$891 for 1981, \$777 for 1980, etc. A member in Group E would receive \$1215 for 1982, \$1113 for 1981, \$971 for 1980, etc.

percentage amount of regular earnings according to the member's employment group (Group A - 6%; Group B - 7%; AND Groups D & E - 7-1/2%). Upon normal retirement, the member would receive an annual pension equal to two percent of the member's average final earnings multiplied by the years of service. The amount of the pension would be unaffected by the member's subsequent eligibility for full Social Security retirement benefits at age 65.

(2) Integrated Retirement Plan. Provides for contributions to, and benefits from, the retirement system which are directly related to the Social Security system. Under this plan the member's contribution is one half that under the optional plan (i.e., Group A - 3%, Group B - 3-1/2%, and Groups D & E - 3-3/4%) up to the maximum Social Security wage base, and the full percentage contribution (i.e., 6%, 7%, and 7-1/2%) of regular earnings in excess thereof. Upon normal retirement, the member in the integrated retirement plan would receive the following benefits:

(a) From date of retirement to age 65: the same as a member retiring under the optional plan (i.e., two percent of average final earnings multiplied by the years of service).

(b) At age 65: one percent of average final earnings up to the Social Security maximum covered compensation level at the time of retirement,\* plus two percent of the average final earnings in excess of the Social Security maximum covered compensation level, multiplied by the years of service. (Compensation is accomplished by arriving at a reduction factor--see below.)

(c) To illustrate, the following example is provided:

- Retirement Group: A
- Year of birth: 1927
- Year of retirement: 1982
- Average final earnings \$20,000
- Years credited service: 30
- Type retirement: Normal (not disability or discontinued service retirement)

\*The Social Security covered compensation is an annually adjusted dollar figure which varies according to the employee's year of birth. (See definition, Sec. 33-35 [j].)

Member X: Annual Pension under  
Optional Retirement Plan

- (1) From 1982 to 1992 (age 65):  
 $2\% \times \$20,000 \times 30 \text{ years} =$   
\$12,000 annually.
- (2) From 1992 on:  
 $2\% \times \$20,000 \times 30 \text{ years} =$   
\$12,000 annually.

Member Y: Annual Pension under  
Integrated Retirement Plan

- (1) From 1982 to 1992 (age 65):  
 $2\% \times \$20,000 \times 30 \text{ years} =$   
\$12,000 annually.
- (2) From 1992 on:  
 $1\% \times \$17,484 \text{ (Social Security covered compensation level)} \times$   
 $30 \text{ years} = \$5,245 \text{ reduction factor.}$   
 $\$12,000 - \$5,245 = \$6,755 \text{ annually.}$

Thus, if the two members lived to the year 2002 (age 75), the total County retirement benefits received (less any COL) would be as follows:

Member X (Optional Retirement Plan): \$240,000 ( $\$12,000 \times 20 \text{ years}$ ).

Member Y (Integrated Retirement Plan): \$187,000 ( $\$12,000 \times 10 \text{ years} + \$6,755 \times 10 \text{ years}$ ).

The above example applies to members who retire on normal retirement. Section 33-45 of the retirement law provides for retirements other than normal: The Discontinued Service Pension (Sec. 33-45 [d]) and Disability Retirement (Sec. 33-43). The discontinued service pension applies to any member with ten or more years of service\* whose position has been abolished or employment has been terminated by an administrative action. Disability retirement applies to service and non-service connected mental or physical incapacitation.

4. Discussion.

a. The retirement law, as currently interpreted, allows any employee retiring under the discontinued service pension provision or disability to convert to the Integrated Retirement Plan, receive the specified retirement contribution refund, but not be subject to a reduced pension at age 65.

b. This "loop hole" in the law is the result of interpreting that section on the Integrated Retirement Plan (Sec. 33-42 [b][2]) which specifies a reduced pension at age 65 as applying only to a "normal retirement." The discontinued service pension and disability retirement have been

\*Continued service for merit members; credited service for elected and appointed members.

interpreted as not "normal." Further, in the case of the disability retirement, the amount of pension (Secs. 33-43 [e] and [f]) do not differentiate between the optional or integrated retirement plans, and have been computed and awarded using the optional retirement plan.

c. Since July 1, 1978, 53 employees have retired under the discontinued pension provision. All converted to the Integrated Retirement Plan before retiring and received a refund from the retirement fund averaging \$7,300, for a total outlay in excess of \$385,000.

d. The number of disability retirees since July 1, 1978, exceed 80; however, I do not know the average refund for converting.

5. Recommendation. The retirement law should be amended to reflect the legislative intent of the original law to require that a member who converts to the Integrated Retirement Plan, receives a cash refund, and subsequently retires under any condition (normal, disability, or discontinued service) will be subject to a reduced pension when the member is eligible for Social Security retirement benefits.

AM/jm

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