

MEMORANDUM

State of Alaska

Department of Law

To: Guy Bell, Director
Division of Retirement & Benefits
Department of Administration

Date: September 19, 2002

File No.: 663-03-0058

Tel. No.: 465-2127

From: John B. Gaguine
Assistant Attorney General
Governmental Affairs Section – Juneau

Re: Status of Benefits Under
AS 39.35.410(i)

During its 2002 session, the legislature passed, and the governor signed, SCS CSSSHB 254(RLS), which became ch. 59, SLA 2002. Section 38 of this law added a new subsection (i) to AS 39.35.410, the Public Employees' Retirement System (PERS) statute dealing with occupational disability benefits:

Notwithstanding (h) of this section, at the time a peace officer or fire fighter receiving occupational disability benefits under this section first attains eligibility for normal retirement, the employee shall irrevocably elect to receive retirement benefits in the amount calculated as the

(1) monthly occupational disability benefit calculated under (d) of this section; or

(2) employee's retirement benefit calculated under the provisions of AS 39.35.370(c).¹

You have asked whether benefits paid under this new subsection are retirement benefits or disability benefits. It is our understanding that the distinction is important because, under federal tax law, disability benefits are not subject to the personal income tax, while retirement benefits are taxable.

¹ AS 39.35.410(h), referred to in subsection (i), provides:

A disabled employee's occupational disability benefit terminates when the disabled employee first attains eligibility for normal retirement. At that time, the employee's retirement benefit shall be calculated under the provisions of AS 39.35.370(c).

It is our opinion that benefits paid under subsection (i) are retirement benefits and should be treated as such by the PERS administration. The language of the subsection, with its reference to “retirement benefits” in a certain amount, supports this conclusion. Moreover, AS 39.35.410(b)(4) provides that occupational disability benefits end when a recipient “reaches normal retirement age,” and nothing in new subsection (i) indicates any intent to modify (b)(4).

On the other side of the equation is new AS 39.35.410(j), also added to the PERS statutes by sec. 38, ch. 59, SLA 2002. That subsection provides, “Notwithstanding (b)(3) of this section, a peace officer or fire fighter who retires under (i) of this section is not subject to the requirements of (g) of this section or AS 39.35.415 during retirement.” Because AS 39.35.410(b) and (g), and AS 39.35.415, all apply to disability benefits, and not retirement benefits, this section would not be necessary if the benefits under AS 39.35.410(i) were retirement benefits.² However, we do not believe that the inference arising from subsection (j) outweighs the clear language of subsection (i), especially as subsection (j) again refers to retirement. It appears that subsection (j) was included in the bill out of an abundance of caution; *i.e.*, the legislature may have recognized that it was not really necessary, but wanted to make crystal clear that AS 39.35.410(b)(3) and (g) and AS 39.35.415 do not apply to retirees under AS 39.35.415(i).

There is no legislative history behind new subsections (i) and (j) to suggest that our interpretation is in error. The subsections were added to SSHB 254 on the Senate side; they first appear in the only version of the bill produced by the Senate, SCS CSSSHB 254(RLS) (which was the version of the bill that passed the legislature). As is usual with the Rules Committee, there was no discussion in that committee about the intent and purpose of the bill (or at least none that is reflected in the committee minutes). And, as you have indicated to us, you were involved in the legislative proceedings and discussions that produced SCS CSSSHB 254(RLS), and you do not recall anyone, including yourself, suggesting that subsection (i) would convert retirement benefits to disability benefits once the recipient

² AS 39.35.410(b)(3) provides that the last payment of “occupational disability benefits” shall be for the first month in which the disabled employee fails to meet the requirements of AS 39.35.410(g) or AS 39.35.415. AS 39.35.410(g) provides that a disabled employee “receiving an occupational disability benefit” must undergo medical examinations as often as the PERS administrator believes advisable (but not more than once a year). AS 39.35.415 provides that an employee “appointed to [occupational or nonoccupational] disability benefits” must apply to the state division of vocational rehabilitation, and may have to enroll in a rehabilitation program.

reached retirement age.

Please feel free to contact us if you have any questions about this matter.

JBG:pvp

cc: Anselm Staack, Dept. of Administration/Retirement and Benefits
Kathy Lea, Dept. of Administration/Retirement and Benefits