

# Memorandum

## State of Alaska Department of Law

**TO:** Melanie Millhorn  
Director  
Division of Retirement & Benefits

**DATE:** April 16, 2004

**TEL. NO:** 269-5178

**AGO FILE:** 661-04-0352  
*General Advice to  
Retirement & Benefits*

**SUBJECT:** TRS Employer Contribution  
Rate Setting

**FROM:** Toby N. Steinberger  
Assistant Attorney General  
Labor & State Affairs Section  
Anchorage

You have asked for an opinion regarding whether the TRS Administrator or the Teachers' Retirement Board sets the contribution rate for TRS employers. It is our opinion that it is the responsibility of the administrator to set the contribution rate for TRS employers.

Alaska Statute 14.25.070 provides that the administrator "certifies" the contributions of TRS employers. Alaska Statute 14.25.070 provides:

Sec. 14.25.070. Contributions by employer. An employer shall contribute to the system an amount equal to the percentage, *as certified by the administrator*, of the sum total of the base salaries of all teachers that is required in addition to teacher contributions to provide the benefits of this chapter times the sum total of the base salaries paid to teachers, including any adjustments to contributions required by AS 14.25.173(a), by the employer. (Emphasis added.)

The word "certify" is defined as "to attest authoritatively," "to attest as being true or as represented or as meeting a standard," and "to inform with certainty." Merriam Webster's Collegiate Dictionary, 10<sup>th</sup> ed. (1996). Thus, the administrator attests that the contribution rate meets the required standard.

The Teachers' Retirement Board has limited powers concerning the administration of TRS; it is only empowered to provide recommendations and resolutions that might

apply to the system. Alaska Statute 14.25.035, which lists the Teachers' Retirement Board's duties, reads in pertinent part:

Sec. 14.25.035. Teachers' Retirement Board. (a) There is established the Alaska Teachers' Retirement Board as follows:

...  
(c) The board shall confer with the commissioner of administration regarding the administration of the system and may make recommendations that it considers necessary.

...  
(e) . . . The board shall hold annually one or more public hearings to discuss proposed changes in the system and to consider and adopt resolutions that might apply to the system.

Thus, the Teachers' Retirement Board can provide recommendations to the Administrator regarding the contribution rate.<sup>1</sup>

I understand that there has been a past practice of having the Teachers' Retirement Board set the contribution rate for TRS employers. However, a past practice cannot alter the clear intent of the Legislature.<sup>2</sup>

If you have any questions, please feel free to contact me.

TNS:kmh

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<sup>1</sup> In contrast, the Legislature has empowered the Public Employees' Retirement Board to certify the contribution rate paid by PERS employers. AS 39.35.040(5)(A) provides:

Sec. 39.35.040. Powers and duties of board. The Public Employees Retirement Board has the following powers and duties:

...  
(5) to have prepared, at least biennially, an actuarial valuation of the total obligations under the system of each employer and, on the basis of the valuation and in time for incorporation of the results in the state budget, to *certify* to the appropriate budgetary authorities of each employer:

(A) an appropriate contribution rate for all employers; . . .

(Emphasis added.)

<sup>2</sup> *Flisock v. State, Division of Retirement and Benefits*, 818 P.2d 640, 644, n.5 (Alaska 1991).