

BLISH & CAVANAGH

C O U N S E L L O R S A T L A W

September 18, 1997

James O. Reilly
Assistant Executive Director
Rhode Island Employees' Retirement System
40 Fountain Street
Providence, Rhode Island 02903-1854

John H. Blish
Joseph V. Cavanagh, Jr.
William R. Landry
Stephen J. Reid, Jr.
Karen A. Pelczarski
Raymond A. Marcaccio

Michael W. Carroll
Staci L. Sawyer
Kristin Rodgers Sullivan

Re: *Pension for Westerly Town Council Members*

Dear Mr. Reilly:

We have been retained to represent Patricia A. Douglas, a member of the Westerly Town Council since 1986. As you may recall, Mrs. Douglas met with you on June 16, 1997, to discuss her entitlement to participate in the Rhode Island Employees' Retirement System pursuant to R.I. Gen. Laws § 45-21-17.1 and § 2-143 of the Westerly Town Code. As I understand the discussions of that June 16th meeting, you agreed that she is entitled to participate in and receive a pension through the State Employees' Retirement System. However, following that June 16th meeting, Frank J. Karpinski responded in writing to an earlier request from the Town regarding the applicability § 45-21-17.1 to current Town Council members (copies of said correspondence are enclosed for your reference). Contrary to your conclusion conveyed to Mrs. Douglas in the June 16th meeting, Mr. Karpinski asserts that Mrs. Douglas is not entitled to receive the pension benefit established in § 45-21-17.1. I am writing to clarify this apparent discrepancy and to ensure that Mrs. Douglas is permitted to participate in and ultimately receive a pension through the State Employees' Retirement System as we believe she is entitled under existing law.

Section § 45-21-17.1 of the Rhode Island General Laws and § 2-143 of the Westerly Code provide in pertinent part:

- (a) Every person who shall have served as a member of the town council for a period of ten (10) years and has attained the age of sixty (60), or who has served for a period of twenty (20) years shall be entitled to receive upon retirement from the town council, and not being otherwise regularly employed by the town, a service retirement allowance equivalent to fifty (50) percent of the salary received at the time of retirement by the councilor; however, not less than a sum of two hundred (\$200.00) for each year served; provided further that if such person so retires after a period of

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service greater than ten (10) years, he shall be entitled to receive an additional service retirement allowance equivalent to five (5) percent of the salary received at the time of retirement for each whole year of service in excess of ten (10) years up to a maximum additional allowance equivalent to fifty (50) percent of the said salary so received. * * *

Section 45-21-17.1(b) further provides that “[t]he provisions of this section shall only apply to those persons presently serving on city or town legislative bodies as of May 15, 1973.” Moreover, § 2-143 of the Westerly Code states that any councilor qualifying for this pension benefit shall be responsible for contributing 100% of the costs of participation, and that “[t]he purpose of this section is to give effect to G.L. 1956, section 45-21-17.1.”

According to Mr. Karpinski and Marianne Sawyer, the Payroll/Personnel Supervisor for the Town of Westerly, the only persons to which § 45-21-17.1 and § 2-143 apply are those seven active members of the Westerly Town Council on May 15, 1973, provided each individual council member (i) has served for more than ten (10) years at the time of his or her retirement from the council and is over the age of 60, or (ii) has served for over twenty (20) years. We believe their interpretation fails for three reasons. First, their interpretation essentially would provide a “sweetheart pension deal” for seven specified individuals, which was clearly not the intent of § 2-143. As stated by then-Councilor Antonio Trovato at the April 28, 1980 passage of this ordinance, the intent of the ordinance was

so that the incentive to serve years **ahead** will be there to preserve our community, and get the caliber of individuals to serve for a period of ten years or more. * * * If we can assure quality representation in our **next** generation of legislators, I support the motion [for passage of this section] and intent of the State of R.I. for allowing this legislation for local legislators.

April 28, 1980 Minutes (emphasis added) (a copy of said Minutes is enclosed).

Thus, the intent of enacting § 2-143 in 1980 was not to reward a finite group of individuals who served the Westerly community seven years earlier, but instead to persuade existing and **future** valuable civil servants to remain on the Town Council for a significant period of time by offering this pension benefit.

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Second, unlike its counterpart in the Rhode Island General Laws, § 2-143 does not expressly limit its application to "only * * * to those persons presently serving on [the Westerly Town Council] as of May 15, 1973." Had that limitation been intended, it would have been included as a subpart to § 2-143.

Finally, and perhaps most importantly, the past application of § 45-21-17.1 and § 2-143 to other former town council members is **contrary** to Mr. Karpinski's and Ms. Sawyer's conclusion. Specifically, there have been seven former town councilors who contributed to the State Employees' Retirement System under these provisions, only **two** of whom served on the Westerly Town Council on May 15, 1973. The other five individuals, namely, Henry Frederico, William Gingerella, Raymond Castagna, Frederick Harwood, and Antonio Trovato (whose comments regarding the passage of § 2-143 are made part of the minutes of the April 28, 1980 meeting), were not active members of the Town Council on May 15, 1973, and therefore, under Mr. Karpinski's and Ms. Sawyer's rationale, should not have been permitted to participate in the State Employees' Retirement System at all.

Even if Mr. Karpinski's and Ms. Sawyer's interpretation of the Rhode Island General Laws and the Westerly Town Code was correct and participation in the State Employees' Retirement System is limited to those seven members of the Westerly Town Council on May 15, 1973, it appears that the Town has selectively provided exceptions to the rule while denying the same benefits to other qualified individuals such as Mrs. Douglas. Mrs. Douglas is presently serving her sixth consecutive 2-year term. She is 59 years old and is entitled to participate in the Employees' Retirement System and ultimately receive a pension upon her retirement from the Town Council, which will be after her 60th birthday. She is prepared to make a lump-sum contribution to the Employees' Retirement System equivalent to 6% of her annual salary for each year in which she has served on the Town Council, in accordance with R.I. Gen. Laws § 45-21-41(a). However, because the Town appears to disagree that she is entitled to participate at all or to receive a pension benefit upon her retirement from the Town Council, we believe that your assistance is needed to ensure the Town's cooperation in producing the appropriate paperwork to establish an individual account for Mrs. Douglas, hereinafter deducting the proper sums from Mrs. Douglas' salary (i.e., for the upcoming second year in this her sixth two-year term, commencing in January, 1998), and making the proper contribution to the Employees' Retirement System pursuant to R.I. Gen. Laws § 45-21-42.

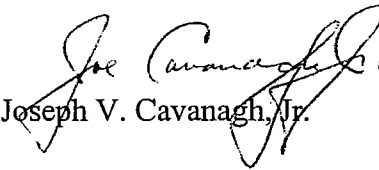
I would appreciate the opportunity to speak with you at your earliest convenience to determine the most efficient and effective manner in which we can ensure that Mrs. Douglas is permitted to participate in and receive a pension through the Rhode Island

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Employees' Retirement System as her former colleagues have. I can be reached at 831-8900.

Thank you for your prompt attention to this matter.

Very truly yours,


Joseph V. Cavanagh, Jr.

Enclosures

cc: Patricia A. Douglas
DOPA7917.LTR