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April 1, 1999

Mrs. Patricia A. Douglas

Westerly, RI 02891

Dear Mrs. Douglas:

Pursuant to your request, I have made an examination of the laws, ordinances and related items concerning the pension situation you have presented to me in your correspondence.

Based upon my review, I have come up with the following conclusions.

1. You are presently serving your seventh consecutive two-year term (14 years) as a member of the Town Council of the Town of Westerly, Rhode Island.
2. The Town of Westerly enrolled in the Municipal Employees' Retirement System on July 1, 1976.
3. The Town of Westerly has not withdrawn from the municipal Employees' Retirement System pursuant to State law.
4. The Town of Westerly has adopted an ordinance which is codified in the Westerly Code as Section 2-143 providing for retirement allowance for members of the Town Council and by virtue of your 14 years as a member of the Town Council, and if you have attained the age of sixty as of the date of your retirement from the Town Council, you will be eligible for a pension under the provisions of this ordinance and under the Rhode Island General Laws.

5. I have reviewed the provisions of 45-27-17.1 (b) which states "The provisions of this section shall only apply to those persons presently serving on city or town legislative bodies as of May 15, 1973." It is my interpretation of this that this language would not apply to any one serving prior to May 15, 1973, however, would not bar any one serving after May 15, 1973. The date of May 15, 1973 is an "effective date" according to my research of the public laws and would not disqualify you from participation.
6. Pursuant to 45-21-14.1, the elected officials are taken into the State retirement system.
7. Correspondence from the Employees' Retirement System dated June 19, 1997 sets forth the following facts:
 - a. The effective date for the Town of Westerly is July 1, 1976.
 - b. There is no evidence of withdrawal by the Town of Westerly from the Retirement System.
 - c. The letter refers to 45-21-8 which states in part "Any employee of a participating municipality as defined in this chapter who becomes an employee on or after the effective date of participation shall under contract of his or her employment become a member of the retirement system." This section of the law goes on to include elected officials.
8. On June 16, 1997 you were informed by James Reilly of the Employees' Retirement System that in his opinion you were entitled to be in the system and that the Town Manager should send a letter saying that an error was committed in overlooking you and he would accept the same.

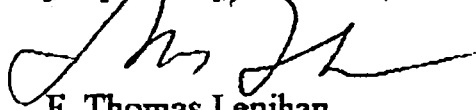
Based upon all of the above, my conclusions are as follows:

- a. You have never received any notification since your election as a public official of your right to become a member of the Employees' Retirement System.
- b. In my opinion, you are entitled to become a member of the Employees' Retirement System.
- c. You should request from the Town Manager a letter in the form requested by Mr. Reilly and should hand deliver such a letter to Mr. Reilly for a final determination as to whether or not you will be accepted into the Employees' Retirement System.



For your convenience, I have prepared a draft of a letter to Mr. Zmyslinski for your review.

Respectfully submitted,



F. Thomas Lenihan
Town Solicitor

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Encls.

