



Employees Retirement System of Rhode Island

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March 17, 2000

Ms. Pamela T. Nolan
Town Manager
Town of Westerly
45 Broad Street
Westerly RI 02891

Re: Patricia A. Douglas

Dear Ms. Nolan:

This letter is in reference to the request by town councilperson Patricia A. Douglas to become a member of the Municipal Employees Retirement System (MERS) and subsequently purchase retirement service credit for the period 1986 to present.

We have reviewed the correspondence received from attorneys Joseph V. Cavanagh, Jr. and F. Thomas Lenihan. It is our opinion that some of the conclusions arrived at by the attorneys are contrary to the provisions of Rhode Island General Laws §45-21-1 through §45-23-63.

R.I.G.L. §45-21-8 addresses "Membership in system." Section 45-21-8(a) specifically refers to elected officials and states in part:

Any employee who shall be elected to an office in the service of a municipality after the effective date, shall have the option of becoming a member of the system, which option must be exercised within sixty (60) days following the date the employee shall assume the duties of his or her office, otherwise that person shall not be entitled to participation under the provisions hereof;

Although this statute indicates that an elected official must exercise his or her option within sixty (60) days following the date the employee assumes the duties of his or her office, it can be assumed that Ms. Douglas was eligible to join the Municipal Employees Retirement System after she was re-elected in 1998 and that she would have been allowed to become a member of MERS when she assumed her duties after the election of 1998. As a member of MERS, Ms. Douglas would be allowed to purchase service credits, but there are limitations. R.I.G.L. §45-21-9(b) provides in part, "The maximum period of service that may be purchased under this section shall be ten (10) years." However, this statute is superseded by R.I.G.L. §45-21-16, which provides:

(iv) Notwithstanding any other provision of law, no more than five (5) years of service credit may be purchased by a member of the System. The five (5)-year limit shall not apply to any purchases made prior to the effective date of this provision. A member who has purchased more than five (5) years of service credit maximum, before [January 1, 1995], shall be permitted to apply such purchases towards the member's service retirement. However, no further purchase will be permitted. Repayment, in accordance with applicable law and regulation, of any contribution previously withdrawn from the System shall not be deemed a purchase of service credit.

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The final limitation is R.I.G.L. 45-21-16(b), which provides:

(b) Except as specifically provided in § 45-21-19 through 45-21-22, no member shall be eligible for pension benefits under this chapter unless the member shall have been a contributing member of the employees' retirement system for at least ten (10) years.

Even though Ms. Douglas will be allowed to be a member of MERS as a councilperson for the Town of Westerly, she must also complete ten (10) years as a *contributing* employee in order to receive a retirement benefit, and will only be allowed to purchase five (5) years of service credit.

It is our opinion that Ms. Douglas would not fall under the provision of R.I.G.L. §45-21-17.1, as she was not a member of the council when this act passed in May of 1973.

It is unfortunate that Ms. Douglas did not begin contributing to MERS when she was first elected in 1986. However, the many law changes since that date will not allow this office to accept the check you have submitted on her behalf as payment for purchase of prior service credit, which is enclosed.

If in the future Ms. Douglas wishes to pursue a purchase of service credit while she is a contributing member of MERS, this office will compute the costs of purchasable service credit for which she is eligible and provide a bill upon request.

I provide the following information should either Ms. Douglas or the Town of Westerly wish to appeal this decision.

This letter constitutes official notification of an administrative denial. Pursuant to Regulation No. 4, Rules of Practice and Procedure for Hearings of the Employees' Retirement System of Rhode Island, Section 3.00, any member aggrieved by an administrative action may request a hearing before the Retirement Board. Upon such request, the matter will be deemed a contested case. Such request shall be in writing and shall be sent to the Retirement Board, 40 Fountain Street, Providence, Rhode Island 02903, Attention: Executive Director, within 30 days of receipt of the administrative decision. A request for hearing shall be signed by the member and shall contain the name of the member; date and nature of decision to be contested; a clear statement of the objection to the decision; and a concise statement of the relief sought. Failure to strictly comply with the procedures outlined above shall be grounds to deny a request for a hearing.

Sincerely,



Joann E. Flaminio
Executive Director

JEF:lat

Cc: J. Reilly
L. Clark / Municipal Rep., Retirement Board
D. Barricelli / Hinckley, Allen & Snyder
P. Douglas

enclosures