
From: Laurie McKinnon [mailto:LMcKinnon@KPER.S.ORG]
Sent: Tuesday, January 25, 2011 4:41 PM
To: Mumford, Terry; Braitman, Mary Beth
Subject: Question About Statute

Terry & Mary Beth: I have a question about the attached statute from Gordon Self at the Revisor's Office. The statute – K.S.A. 20-2622 – provides judges with the opportunity to return to the bench part-time after retirement with an agreement put in place at a particular time. Number one, Gordon questions whether or not this statute is even kosher (and it's been in place since 1995, so it's been blessed by the IRS) and number two, would it remain kosher if the phrases I've highlighted requiring the agreement are removed? Any thoughts? Thank you!

<<20-2622.docx>>

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Helen Pedigo

From: Helen Pedigo
Sent: Monday, February 14, 2011 8:54 AM
To: Senator Owens ; Theresa Kiernan; 'Jason.Thompson@rs.ks.gov'
Subject: SB 83 Senior Judge Program Amendments

Senator Owens,
FYI –It appeared that the bill does not create any problems regarding KPERS or the Feds. See below.

From: Laurie McKinnon [<mailto:LMcKinnon@KPERS.ORG>]
Sent: Friday, February 11, 2011 9:46 AM
To: Kathy Porter
Subject: FW: Question About Statute

Kathy: See conversation about K.S.A. 20-2622, below. Let me know if you need anything else. Thanks!

From: Braitman, Mary Beth [<mailto:MaryBeth.Braitman@icemiller.com>]
Sent: Friday, January 28, 2011 1:44 PM
To: Laurie McKinnon
Cc: Mumford, Terry
Subject: RE: Question About Statute

Laurie:

We believe that the current provisions of KSA 20-2622(1) raise an issue with regard to whether there has been a severance from employment with respect to a judge who retires prior to age 62 who enters into an agreement to perform judicial duties (at the time of retirement or shortly thereafter).

Under IRC Section 401(a)(36), a qualified defined benefit plan such as KPERS may make distributions to a participant who has not separated from service, but who has attained age 62. A qualified plan may also make in-service distributions to a participant who has attained normal retirement age under the plan. If a plan participant is not age 62 or has not attained normal retirement age, then the participant must have a bona fide severance from employment in order to receive a benefit from a qualified pension plan. The IRS has taken the position that a person who moves from a full-time position to a part-time position without a break in service has not really had a bona fide severance from employment. The IRS has also taken the position that a pre-termination agreement to reemploy constitutes a sham separation, and would not qualify as a bona fide separation.

It appears that under KSA 20-2608 a judge can receive a benefit earlier than age 62. It also appears that under KSA 20-2608, age 62 is the normal retirement age under the plan. Therefore, if a judge that is younger than age 62 wants to draw a benefit, he must have a bona fide severance from employment. If such a judge enters into a written agreement to serve as a temporary judge prior to his retirement, then the IRS would likely question whether he really has had a true severance from employment.

Removing the highlighted provisions would be fine under the IRS point of view. In fact, removing the highlighted language in (1) is a simple solution to this issue. However, as far as implementation of the amended provision, the Supreme Court should be aware that, for a judge who has not attained age 62, the agreement to serve as a temporary judge should not be entered into prior to or soon after retirement.

Let us know if this answers your question.

Terry and Mary Beth

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