



**Formal Advisory Opinion
No. 2 of 2013**

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NOTE: Pursuant to the Standard Operating Procedures of the Joint Legislative Committee on Ethical Standards, Section II, paragraph 4, the name of the requester and other identifying information has been redacted from this opinion.

May 3, 2013

[Requester's Name and Address Redacted]

Dear _____:

You have requested, through the Legislature's Ethics Counsel Marci Levin Hochman, an opinion from the Joint Legislative Committee on Ethical Standards ("Joint Committee") on whether pension and Social Security payments are required to be reported on a legislator's financial disclosure statement and, if so, under what category.

Pension and Social Security payments should be reported on a legislator's financial disclosure statement in section I. as earned income.

Subsection a. of section 2:14 of the Legislative Code of Ethics, which governs what must be disclosed on a legislator's financial disclosure statement, is ambiguous regarding pensions and Social Security. While such payments are "income, received from sources other than the State Legislature," they are not listed in paragraphs (1) through (10) as items of income that shall be included on the financial disclosure statement. The instructions to the financial disclosure statement provide that "[d]erivative earned income such as a pension or social security may be noted under salary." That sentence was added in 2004. The Joint Committee's minutes of that year do not explain whether the new language was intended to require disclosure or simply to explain where to list such income if a legislator voluntarily reports it. Neither the legislative history of section 2:14 nor the prior opinions of the Joint Committee address pensions or Social Security.

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Pension payments should be disclosed because they are a form of employee compensation that could present a conflict of interest. The instructions provide that earned income "generally means employee compensation" Pensions are employee compensation. 70 C.J.S. Pensions §3 (2005) ("pension benefits represent a form of deferred compensation for services rendered.") Section 2:14a.(1) of the Legislative Code of Ethics lists categories of earned income that must be disclosed, including: salaries, bonuses, royalties, fees, commissions, and profit-sharing payments. Like these kinds of income, a pension payment could influence a legislator's decision-making regarding legislation. Thus, disclosure is appropriate.

Requiring legislators to disclose pension payments is consistent with the disclosure requirements for other State officials. New Jersey Supreme Court Justices, Judges of the Superior Court, and Judges of the Tax Court must report pension payments (excepting federal pension payments) on their Judicial Financial Reporting Statement. Instructions For Completing The Judicial Financial Reporting Statement Applicable to Supreme Court Justices, Superior Court Judges, Tax Court Judges, §I.G. at p.3 (2013). Executive Branch, public higher education, and other officials required to file a financial disclosure statement with the New Jersey State Ethics Commission must report pensions as well. 2013 Instructions: Financial Disclosure Statement For Public Officers, §h.5 at p.4; 2013 Instructions: Financial Disclosure Statement For Public Employees, §h.5 at p.4.

Social Security payments do not present exactly the same issues as pension payments. Social Security is a public contributory insurance program that provides old age, survivor's, and disability benefits. 81 C.J.S. Social Security and Public Welfare §77 (2005). Unlike a pension plan that may have thousands of pensioners, the Social Security Administration states that 60.4 million people were receiving Social Security payments as of December of 2011. Office of Retirement and Disability Policy, U.S. Social Security Administration, Facts & Figures About Social Security, 2012, available at: http://www.ssa.gov/policy/docs/chartbooks/fast_facts/2012/fast_facts12.html#page32 (last visited April 12, 2013). The criteria for receiving Social Security benefits are publicly available and widely known. Possibly for these reasons, fewer public officials are required to disclose Social Security payments. Officials required to file a financial disclosure statement with the New Jersey State Ethics Commission are required to report Social Security income. 2013 Instructions: Financial Disclosure Statement For Public Officers, §h.5 at p.4; 2013 Instructions: Financial Disclosure Statement For Public Employees, §h.5 at p.4. State Supreme Court Justices, Judges of the Superior Court, and Judges of the Tax Court do not have to disclose whether they or their spouse are receiving Social Security. Instructions For Completing The Judicial Financial Reporting Statement Applicable to Supreme Court Justices, Superior Court Judges, Tax Court Judges, §II at p.6 (2013).

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In the interest of full disclosure, we are of the opinion that legislators should report Social Security payments. The purpose of the financial disclosure statement is to provide the public with an understanding of the sources of a legislator's income. Social Security may make up a large portion of some legislators' incomes. Also, although Social Security is a federal program, it implicates State-level policies. For example, if the Legislature were to consider placing a constitutional amendment on the ballot affecting the exception from the State income tax for Social Security benefits, a legislator's receipt of Social Security may be of public interest.

Nothing in this opinion should be construed to require a legislator to report the reason Social Security is being received. As with other kinds of income, only the name and address of the source, amount code, and recipient need be disclosed. If a legislator is concerned that this would require the disclosure of private medical information, he or she should seek an opinion from the Joint Committee relevant to his or her particular situation.

In conclusion, we are of the opinion that pension and Social Security payments should be reported on a legislator's financial disclosure statement in section I. as earned income. Counsel will recommend to the Joint Committee that it consider amendments to the instructions to the legislative financial disclosure statement to be used for reporting income for calendar year 2013 to reflect this opinion.

Very truly yours,

JOINT COMMITTEE ON ETHICAL STANDARDS

Albert Porroni
Counsel

By: _____
Gabe Neville
Senior Legislative Counsel

AP:N

c. Marci Levin Hochman, Ethics Counsel