
Commission Meeting

of

STATE HOUSE COMMISSION

LOCATION: Conference Room
28 West State Street
Trenton, New Jersey

DATE: October 5, 2000
9:15 a.m.

MEMBERS OF COMMISSION PRESENT:

Devon L. Graf, Chair
(Representing Governor Christine Todd Whitman)
Senator Walter J. Kavanaugh, Vice-Chair
Assemblyman Leonard Lance
Charlene M. Holzbour
Maureen Adams
(Representing Roland M. Machold)



ALSO PRESENT:

Edward R. McGlynn, Secretary
Robert J. Shaughnessy Jr., Counsel
Carol Johnston, Counsel

Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
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(The State House Commission held a teleconference meeting on October 5, 2000 at 9:15 a.m. Members of the Commission present at 28 West State Street were Devon L. Graf, Chairman; Assemblyman Leonard Lance, Director Charlene M. Holzbaaur; Deputy Treasurer Maureen Adams; Edward R. McGlynn, Secretary; Robert J. Shaughnessy Jr., Counsel; and Carol Johnston, Counsel. A member of the Commission present via teleconference was Senator Walter J. Kavanaugh.)

MR. McGLYNN (Secretary): Senator Kavanaugh, Devon Graf is here, also, and Assemblyman Lance, Director Holzbaaur, Deputy Treasurer Adams. Do you desire to act as Chair today, or would you like Mr. Graf to do that?

SENATOR KAVANAUGH: Let Devon do that.

MR. McGLYNN: Okay, thank you.

MR. GRAF (Chairman): Good morning, Senator.

SENATOR KAVANAUGH: Good morning.

MR. SHAUGHNESSY (Counsel): Yes. Good morning. In compliance with Chapter 231 of the Public Laws of 1975, notice of this meeting was given by way of notice filed with the Secretary of State, delivered to the State House Press Corps on October 2, 2000, and posted at the offices of the State House Commission.

Thank you.

MR. McGLYNN: This is a special meeting of the State House Commission pursuant to the notifications that were given. Deputy Attorney General Shaughnessy has a conflict on this matter, so Deputy Attorney General Carol Johnston is going to sit as the (indiscernible) Deputy for the purposes of this meeting.

The first item on the agenda is the matter of the Retired Judges Association of New Jersey, Phyllis Healy and the surviving children of the Honorable Joseph Healy and Dorothy Matturri.

Mr. Chairman, how would you like to proceed?

MR. GRAF: I believe the requesting party is the Department of Treasury, Division of Pensions. Would anyone from the Division or their attorneys wish to speak on the matter?

SUSANNE CULLITON, ESQ.: Yes. Thank you, sir.

In the exceptions filed on September 7, 2000--

MR. McGLYNN: Excuse me, would you identify yourself, please?

MS. CULLITON: Oh, forgive me. Susanne Culliton, Deputy Attorney General, on behalf of the Division of Pensions and Benefits.

MR. McGLYNN: Thank you. Go ahead, I'm sorry.

MS. CULLITON: That's okay.

The Division's position was set forth at length in the exceptions that were sent on September 7, 2000. Basically, I intended to just briefly reiterate the points that were made in that brief and welcome any questions that you may have. The question that's come before this Commission is the interpretation of final salary as it applies to the widows or widowers that receive benefits under Subchapter 17 and 18, which is death in active service and death after retirement.

The first question that comes before this Commission, and came before the Court, was whether or not there's an ambiguity in the statute, or if it's clear on its face. It's the Division's position that there is, in fact, ambiguity in the statute. Therefore, the arguments that have been set forth to this

Commission with regard to the overall scheme that the Division has provided and the interaction with the COLA benefits come to the forefront.

Firstly, the issue of final salary is ambiguous, because the definition in 17 and 18, while it does have a different definition than in the -- I think it's the Subchapter 3(g) that defines final salary as the annual salary received by the member at the time of his retirement or death, applies to the entire section. The insurance benefit is given in that section as well, but final salary pursuant to 3(g) is the definition that's applied as to the insurance benefit. The question then is, does this new definition only apply to the continuing pension benefit? The Division of Pensions and Benefits has interpreted the statute for nearly 20 years to mean that final salary is the final salary at the time of this individual's, the member's, actual death.

Consistent with all of the other retirement statutes in the State of New Jersey -- the Public Employees' Retirement System, the Teachers' Pension and Annuity Fund, the State Police Retirement System, as well as the Police and Firemen's Retirement System -- each are fixed benefits at the time of an individual's retirement or death, depending upon the issue that's come before.

As noted in the exceptions and to the ALJ, there's no legislative history to support the determination that the ALJ rendered in this matter that final salary means the salary that will be continually increasing as the statute sets forth for live, sitting judges.

Most importantly, there is a Pension Adjustment Act that deals with routine adjustments for COLA benefits so that an individual's survivor benefit or pension benefit is increased on a regular basis. That statute came before the amendments for the definition of final salary found in 17 and 18,

and there is no cross-reference between the two. An individual after two years starts to receive the increased retirement benefits, cost-of-living adjustments, on a regular basis, all of them based upon that final salary and then increased for the cost-of-living adjustment.

That's essentially the arguments that I wanted to raise. As I said, they are set forth more at length in the exceptions filed on September 7.

Are there any questions that I can answer for you?

MR. GRAF: Do you have any questions? (no response)

Okay. Thank you.

MS. CULLITON: Thank you.

SENATOR KAVANAUGH: Mr. Chairman?

MR. GRAF: Yes.

SENATOR KAVANAUGH: Don't we first have to move for the extension of time -- back to October so that we can clear up rather than move ahead that we haven't said we want to extend the time?

MS. JOHNSTON: Senator, this is Carol Johnston speaking. We have been granted an extension of time to file an issue of final decision by the Chief Judge of the Office of Administrative Law. So we are over that hurdle and clear to consider a final decision and consider the parties' positions today.

SENATOR KAVANAUGH: Okay. Thank you, Carol.

MR. GRAF: Mr. Margulies.

ROBERT E. MARGULIES, ESQ.: Yes. Good morning. Good morning, Senator. Good morning, Assemblyman and members of the Commission. I'm Robert Margulies, and I represent the Retired Judges Association and Mrs Healy and Mrs. Maturri and the children of Mrs. Healy.

I'll be very brief, because I think the issues have been clearly put before you. I'm here to support the well-reasoned decision of Judge Springer and suggest that the exceptions that have been articulated both in writing and orally by the Attorney General have no merit for your consideration. The fundamental problem here is whether there is an ambiguity or clear language in an amendment in 1982 to the Judicial Retirement System's sections relating to death of judges, whether on active duty or in a retirement status.

And what is very clear-- First, to talk about the COLA. The COLA provisions of the pension system were put in place in 1958. So, in 1982, when the Legislature, without a legislative history, and as you know none is necessary, made a determination to change these two sections of the retirement system and none others, they were well aware of the COLA provisions. They were in place. And in 1992 and 1994, the COLA provisions were again modified and no reference was made by the Legislature, so there was clearly no intention to change the provisions -- the (c) provision of 43:6A-17, death in active service, or the last sentence of 43:6A-18, the death after retirement.

I think what is significant and what we want to point out and what Judge Springer, the Administrative Law Judge, pointed out is, whether or not the Pension System thought this was ambiguous or not -- because that's merely the argument of the Attorney General at this point -- however they interpret this, it is clear that 43:6A-3(g), which is the general definitional section, says, "final salary" means the annual salary received by the member at the time of his retirement or death, which would be consistent with the way the statute has been interpreted. However, in 1982, the Legislature came along and made this

specific change for these two sections and said, “For the purposes of this section, final salary means the current salary of the judicial position in which the member served at the time of death.” A clear change, I submit to you, an unambiguous change. And unless you get ambiguity, you never get to the point of arguing interpretation.

Now, the suggestion that the Legislature could not have known about COLA at the time, I think, is without any basis, because it was-- Under rules of statutory construction, the Legislature’s presumed to know the legislation, and certainly, this is a particular area of law. It’s a technical area of law. With respect to the Attorney General’s suggestion that this section, the two statutes that I’m talking about, the two sections that have been interpreted consistent with other pension statutes, really makes my point. These two sections are different, and they’re the only ones that are different.

So I just ask you to consider the well-reasoned opinion of the Administrative Law Judge. I ask you not to modify it in any way. And I suggest, as I suggested to you several weeks ago, that if the Division of Pensions has a concern and they think this is wrong, then let the Appellate Court squarely deal with that issue. We have, and I probably don’t have to suggest it-- I have suggested that the procedural way that we’re getting here is improper, but that’s merely the procedure. What’s really important here is getting to the substance. So I advocate and I hope you will let Judge Springer’s reasoned decision go forward.

Unless there are questions, I thank you.

MR. GRAF: Any questions? (no response)

I have one question relating to the lump sum payment under the same section that you've cited, under 43:6A-17. Under Subsection (b), it notes that there would be a lump payment, basically, of one-and-one-half times the final salary received by the member. I presume it's the insurance section that the deputy was referring to.

MR. MARGULIES: Correct.

MR. GRAF: If they're using the same term final salary, which is articulated in subsection (c), how do you reconcile the two? Because obviously, if it's a lump sum, they're not going to keep changing that with time.

MR. MARGULIES: Well, it always changes with time.

MR. GRAF: Well, not for that individual that received it.

MR. MARGULIES: But it always-- In other words, under any insurance plan, as I understand. And in looking and preparing for today, I looked at the State House Commission. And I understand that you in the State House Commission have a technical advisory, an actuary who is a technical advisor by statute to this Commission. So, if you've delved into the actuarial area, that would be, I think, where the Commission would look. But under any insurance system, the mere fact that if that were a moving target should not cause any problem to actuaries. In other words, such that the way that these systems are put together under any insurance system--

MR. GRAF: Maybe you're not understanding my question.

MR. MARGULIES: Maybe not.

MR. GRAF: The question was that the member's beneficiary receives an amount that's one-and-a-half times the final salary. If at the time

of death, that is done and the spouse receives one-and-a-half times, the following year under-- I believe your interpretation of final salary would change to -- if there's a legislative change to the judges' salary the following year to a higher amount, would they have to go back then and readjust that one-and-a-half times payment--

MR. MARGULIES: No.

MR. GRAF: --to account for that since the current salary for that position has changed?

MR. MARGULIES: No, because the event took place. In other words, that's an insurance provision. So, once that took place and a payment were made, the payment would be made. It's at the time. Because what it says is, "It's in one sum." So it's obviously-- I think, it appears it would be very clear, at that time of the death, that's the insurance benefit that's made. The payout is made. One sum, at that time, and you don't come back. I'm not inconsistent with any other insurance program that I'm aware of. I don't have a problem suggesting-- We are not advocating-- Let me put it a different way. We are not advocating that that would be a continuing target and the insurance fund would continue over a period of time for the increment.

MR. GRAF: Assemblyman Lance.

ASSEMBLYMAN LANCE: Thank you, Mr. Chairman.

In other words, counselor, definitionally from your perspective, final salary means two different amounts, one regarding payment of an insurance proceed and one regarding periodic pension payments.

MR. MARGULIES: It could. And the reason it could is if, for instance, in Judge Healy's circumstance, where he died before there was a

change, his wife received that one-time sum payment. And so, we're suggesting that the final salary for purposes of the 25 percent-- And I think last time, I want to make it very clear, this pension is 25 percent, not 75 percent, of the final salary that would be increased that increment. And I also want to make clear, and I hope I did last time--

ASSEMBLYMAN LANCE: So the answer to my question is yes, definitely.

MR. MARGULIES: The answer is yes.

ASSEMBLYMAN LANCE: Thank you.

Number two, if it is finally adjudicated that there should be a different and greater amount for the periodic benefit, as you have suggested--

MR. MARGULIES: Yes, sir.

ASSEMBLYMAN LANCE: --if the Administrative Law Judge's decision is ultimately -- prevails, is it possible for the Legislature to amend the statute, or is the Legislature precluded from doing so based upon our inability to diminish judicial salaries in any way?

MR. MARGULIES: The answer to that, it's possible for the Legislature to do anything. My argument at that time--

ASSEMBLYMAN LANCE: Well, I suggest legislators, counselor, prefer to act constitutionally.

MR. MARGULIES: Of course. I wasn't being flip in any way. I wasn't intending to be. I would suggest that that is a vested benefit that should not be taken away from those who had already received it. You could affect-- I think, constitutionally, you could affect the future, certainly.

ASSEMBLYMAN LANCE: We could not affect those sitting on a bench at that time.

MR. MARGULIES: I agree.

ASSEMBLYMAN LANCE: So it's your position that we would be unable to amend it, in the method suggested by the Attorney General's Office, for the 600 judges or so who are currently sitting in New Jersey.

MR. MARGULIES: Yes. And to put it in context, my understanding is there are -- at least when I was given the figures from the Attorney General's Office about a year ago -- approximately 112 widows that are receiving benefits under the system out of the 600 or so judges.

ASSEMBLYMAN LANCE: But my point would be, we probably couldn't even amend it for a 35-year-old judge who had just gone onto the bench who is in active service and may not retire or die for another generation.

MR. MARGULIES: True.

ASSEMBLYMAN LANCE: Thank you, counselor. You've been specific in your answers to my questions.

MR. GRAF: Any other questions from the Commission members?
(no response)

Thank you.

MR. MARGULIES: Thank you.

MR. McGLYNN: I think it's appropriate at this time that we go into Executive Session to deliberate on this issue.

MR. GRAF: Agreed. Do I have a motion?

DEPUTY TREASURER ADAMS: So moved.

MS. HOLZBAUR: Second.

MR. GRAF: Roll call, please.

MR. McGLYNN: Deputy Treasurer Adams.

DEPUTY TREASURER ADAMS: Yes.

MR. McGLYNN: Director Holzbaur.

MS. HOLZBAUR: Yes.

MR. McGLYNN: Assemblyman Lance.

ASSEMBLYMAN LANCE: Yes.

MR. McGLYNN: Senator Kavanaugh.

SENATOR KAVANAUGH: Yes.

MR. McGLYNN: Chairman Graf.

MR. GRAF: Yes.

MR. McGLYNN: Thank you.

We will discuss this issue and return back into the regular session in a few minutes.

(EXECUTIVE SESSION)

AFTER EXECUTIVE SESSION:

MR. McGLYNN: All right. We need a motion to return to public session, please.

ASSEMBLYMAN LANCE: I so move.

MR. McGLYNN: Is there a second?

SENATOR KAVANAUGH: Second.

MR. McGLYNN: All in favor? (affirmative responses)

Thank you.

We are back in public session.

MR. GRAF: We have very carefully considered both sides as are the good-sized arguments in the matter. I will make a motion-- At this time, I make it a motion to reverse the Administrative Law Judge's decision and request that the Attorney General's Office prepare the proper paperwork to do so. In our decision, we came to decide that, one, there should be deference given to the administrative agency that has worked with the statute for 18 or more years; two, that the Judicial Retirement System -- I'm trying to get the wording correct in this matter -- I believe, in this case, with the respondents before us--

MS. CULLITON: The petitioner.

MR. GRAF: The petitioners before us.

MR. MARGULIES: The petitioner.

MR. GRAF: Okay, the petitioners did not show that the meaning in their view is unambiguous, that the statute as applied by the division surely is unambiguous to us, that it just fails to show that the other interpretation is a clear definition.

Is there anything else that, in order to--

SENATOR KAVANAUGH: I'll second that.

MR. McGLYNN: It is seconded by Senator Kavanaugh.

MR. GRAF: Roll call.

MR. McGLYNN: Senator Kavanaugh.

SENATOR KAVANAUGH: Yes.

MR. McGLYNN: Assemblyman Lance.

ASSEMBLYMAN LANCE: Yes.

MR. McGLYNN: Deputy State Treasurer Maureen Adams.

DEPUTY TREASURER ADAMS: Yes.

MR. McGLYNN: Director Holzbaur.

MS. HOLZBAUR: Yes.

MR. McGLYNN: Director Graf.

MR. GRAF: Yes.

MR. McGLYNN: Thank you very much.

That concludes the matter of the Judicial Retirement System.

And, Senator, I understand that you have to leave right now, or you are on your way out.

SENATOR KAVANAUGH: Yes, but I'd like to cast my vote in the affirmative for the other materials that are coming before us.

MR. McGLYNN: Thank you very much.

SENATOR KAVANAUGH: Okay, everyone, have a nice day.

MR. McGLYNN: You, too, Senator.

Thank you for your time.

SENATOR KAVANAUGH: Right.

MR. McGLYNN: We have two other matters on for new business. I'm sorry, we have three others. Let me do No. 2.

The New Jersey Department of the Treasury, on behalf of the Departments of Environmental Protection and Law and Public Safety, Juvenile Justice Commission, request the approval to transfer ownership of 94 acres of the New Jersey Training School for Boys from the Juvenile Justice Commission

to the Department of Environmental Protection. The subject property is located at Block 77, Lot 21, in Monroe Township, Middlesex County.

ASSEMBLYMAN LANCE: So moved.

DEPUTY TREASURER ADAMS: Seconded.

MR. GRAF: I see there's no one here for comment.

MR. McGLYNN: Okay, Chairman Kavanaugh was in the affirmative.

Assemblyman Lance.

ASSEMBLYMAN LANCE: Yes.

MR. McGLYNN: Deputy Treasurer Adams.

DEPUTY TREASURER ADAMS: Yes.

MR. McGLYNN: Director Holzbaur.

MS. HOLZBAUR: Yes.

MR. McGLYNN: Director Graf.

MR. GRAF: Yes.

MR. McGLYNN: Item No. 3 concerns Morven in Princeton Borough. The New Jersey Department of Treasury, on behalf of the Department of State, requests approval to lease Morven, the former Governor's residence, to Historic Morven, Inc. The property is located at 63 Stockton Street, Block 1201, Lot 4, Princeton Borough, Mercer County.

ASSEMBLYMAN LANCE: So moved.

DEPUTY TREASURER ADAMS: Seconded.

MR. McGLYNN: Chairman Kavanaugh is in the affirmative.

Assemblyman Lance.

ASSEMBLYMAN LANCE: Yes.

MR. McGLYNN: Deputy Treasurer Adams.

DEPUTY TREASURER ADAMS: Yes.

MR. McGLYNN: Director Holzbaur.

MS. HOLZBAUR: Yes.

MR. McGLYNN: Director Graf.

MR. GRAF: Yes.

MR. McGLYNN: Item No. 4 is, the New Jersey Department of the Treasury requests authorization to eliminate its right to purchase the 100 Riverview Office Building. The subject property is located at Riverview Executive Park, Block 68A, Lot 5, in Trenton, Mercer County.

DEPUTY TREASURER ADAMS: So moved.

ASSEMBLYMAN LANCE: Seconded.

MR. McGLYNN: Chairman Kavanaugh is in the affirmative.
Assemblyman Lance.

ASSEMBLYMAN LANCE: Yes.

MR. McGLYNN: Deputy Treasurer Adams.

DEPUTY TREASURER ADAMS: Yes.

MR. McGLYNN: Director Holzbaur.

MS. HOLZBAUR: Yes.

MR. McGLYNN: Director Graf.

MR. GRAF: Yes.

MR. McGLYNN: That concludes the agenda items. If there are no others--

MR. GRAF: Motion to adjourn?

ASSEMBLYMAN LANCE: So moved.

DEPUTY TREASURER ADAMS: Seconded.

MR. McGLYNN: Thank you so much for responding so quickly.

We appreciate it very much.

(MEETING CONCLUDED)