



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 21, 1976

ATTORNEY GENERAL OPINION NO. 76-182

Mr. John K. Corkhill
Executive Secretary
Public Employees Retirement System
400 First National Bank Tower
One Townsite Plaza
Topeka, Kansas 66603

Re: Kansas Public Employees Retirement System--Arrearages--
Nonalienation

Synopsis: Funds in members' accumulated contribution accounts are not subject to the claims of creditors of employees, including participating employers who have advanced sums to the System to settle arrearages of employees' contributions. No deduction or adjustment may be made in a member's accumulated contribution account to prevent withdrawal of the entire sum duly credited thereto, in order to permit an employer to recover or recoup an indebtedness outstanding from the employee to the employer on account of any monies advanced to the System by the employer to settle such employee's arrearage.

* * *

Dear Mr. Corkhill:

You inquire concerning the settlement of arrearages which result when it is discovered that an employee of a participating employer in the Kansas Public Employees Retirement System has failed to make contributions for a period of time during which contributions were due. For example, an individual entering the employment of the state, a participating employer, may be erroneously relieved of the duty to make the required contributions for a period of time due to the employer's failure to determine the status of the employee as a participating employee immediately prior to entry in state employment.

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Upon discovery of the arrearage, the employer is liable to the System for both employer and employee contributions, and must remit them at once. K.A.R. 80-4-5. If an employee has been terminated prior to or at the time the arrearage is discovered, the employer may remit only the employer contribution, and agree to pay any employee contribution which may later become due as a result of further service.

The employer then has a right of recovery against the employee for the contributions which have been advanced on the employee's behalf and which have been credited to the member's accumulated contribution account.

Commonly, the amounts which are advanced by the employer are repaid to the employer by the employee pursuant to an arrangement mutually agreed upon by the employee and employer. If, however, the employee terminates before the amount is repaid in full, he may, after the requisite waiting period, request withdrawal of all amounts which are credited to the employee's accumulated contribution account, including the amounts advanced on the employee's behalf by the employer.

The proposal has been advanced that in order to prevent such an employee from withdrawing amounts credited to his account which has been advanced by the employer but not fully repaid, that an adjustment be made in the member's accumulated contribution account so that the amount subject to withdrawal will not exceed the amount of the employer's actual contributions. Presumably, the amount still owed the employer would be remitted by the System to the employer from the account in question.

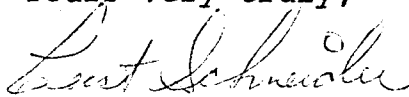
K.S.A. 74-4923 provides in pertinent part thus:

"Any annuity, benefits, funds, property, or rights created by, or accruing to any person under the provisions of K.S.A. 74-4901 *et seq.* or K.S.A. 74-4951 *et seq.*, and any acts amendatory thereof or supplemental thereto, are hereby made and declared exempt from any tax of the state of Kansas or any political subdivision or taxing body thereof, and shall not be subject to execution, garnishment, or attachment, or any other process or claim whatsoever, including decrees for support or alimony, and shall be unassignable, except as specifically provided by this act." [Emphasis supplied.]

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In attempting such recovery or recoupment of sums advanced on behalf of the employee, the employer asserts a claim merely as a creditor of the employee. Funds in a member's accumulated contribution account are immune from "any . . . claim whatsoever." In my judgment, the System is not permitted to make any such adjustment whatever in the amount remitted to the employee, and must remit upon withdrawal the entire sum duly credited to his account, with no deduction or adjustment for any amount which may be claimed by any creditor of the employee, including a participating employer to whom the employee still owes on account of the member's arrearage which the employer has advanced in the member's behalf.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. James Cobler
Director, Division of Accounts
and Reports
Department of Administration
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