



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 89- 12

James B. McKay, Jr.
City Attorney
P.O. Box 49
El Dorado, Kansas 67042

Re: State Boards, Commissions and Authorities -- Public
Employees Retirement Systems; Kansas Public
Employees Retirement System -- Disability Benefits;
Firefighters Relief Association

Synopsis: Disability payments received from a firefighters
association insurance policy may be deducted in
calculating long-term disability benefits payable
to members of the Kansas Public Employees
Retirement System. Cited herein: K.S.A. 40-1701;
40-1703; K.S.A. 1988 Supp. 40-1707; 74-4927.

* * *

Dear Mr. McKay:

As attorney for the City of El Dorado, you have asked our
opinion regarding the El Dorado Firemen's Relief Association
(Association) and disability benefits under the Kansas Public
Employees Retirement System (KPERS). Specifically, you ask
whether the benefits from the Association's insurance policy
that pays disability income to the Association's members can be
legally deducted from the long-term disability payments under
KPERS.

The KPERS board of trustees "may establish a plan of death
and long-term disability benefits to be paid to the members of

the retirement system. . . ." K.S.A. 1988 Supp. 74-4927(1).
The statute further provides:

"Such plan may provide that any amount which a member receives as a social security benefit or a disability benefit from any source by reason of employment including, but not limited, [sic] to workman's compensation benefits may be deducted from the amount of insured disability benefit payments under such plan. . . ." K.S.A. 1988 Supp. 74-4927(1) (b). (Emphasis added).

KPERS has adopted a long-term disability plan funded by disability insurance issued by Security Benefit Life Insurance Company (SBL). Under the heading "Disability Income Benefits," the policy states as follows:

"The Disability Income Benefit shall be 65% of the Member's Current Annual Rate of Compensation on the date such disability commenced, payable in equal monthly installments, reduced by the Social Security primary disability or retirement benefit, one-half of the Worker's Compensation benefit, and by any other disability benefit from any other source by reason of employment, subject to a minimum disability benefit of \$100.00 per month." (Emphasis added).

The El Dorado Firemen's Relief Association, a corporation comprised of employees of the El Dorado Department of Public Safety, is a participant in the firefighters relief act, K.S.A. 40-1701 et seq. In summary, this law provides that each insurance company must pay to the Insurance Commissioner "a tax at the rate of 2% of the total amount of all premiums on fire and lightning insurance written covering risks located [in Kansas] during the preceding calendar year." K.S.A. 40-1703. These funds are distributed to individual firefighters relief associations across the state for the purpose of purchasing insurance, such as disability insurance, for the benefit of its members.

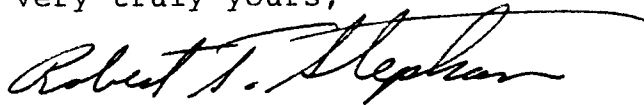
The question has arisen whether disability benefits received through a firefighters association can legally be deducted in calculating the long-term disability benefits under

KPERS. The KPERS office and legal counsel for SBL are of the opinion that benefits from firefighters associations are to be deducted from KPERS benefits as such constitute "a disability benefit from any source by reason of employment." K.S.A. 1988 Supp. 74-4927(1)(B). The basis for this conclusion is that, but for employment as a firefighter, a person could not receive disability payments from an association.

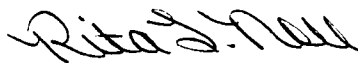
We agree with this conclusion. Insurance contracts are enforceable according to their terms so long as they do not conflict with pertinent statutes or public policy. Farmers Ins. Co. v. Prudential Property & Cas. Ins. Co., 10 Kan. App. 2d 93, 95 (1984). The policy issued by SBL follows the language of K.S.A. 1988 Supp. 74-4927. When terms of an insurance contract "are clear and unambiguous, the words are to be taken and understood in their plain, ordinary, and popular sense. . . ." Nash v. Adkins, 11 Kan. App. 2d 326, Syl ¶ 2 (1986). By statute, a person must be a firefighter in order to receive disability funds from the firefighters relief act, K.S.A. 1988 Supp. 40-1707(a)(1). We believe the words in the statute and policy are clear and unambiguous. The policy meets the provisions of the statute, which authorizes the deduction of the benefits in question. Cf., Rubin v. Kansas Public Employees Retirement System, 229 Kan. 575 (1981).

In summary, it is our opinion that disability payments received from a firefighters association insurance policy are deducted in computing long-term disability benefits from the KPERS plan.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Rita L. Noll
Assistant Attorney General

RTS:JLM:RLN:bas