

State of North Carolina

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ATTORNEY GENERAL

February 5, 2008

The Honorable Tony Rand
North Carolina Senate
300 N. Salisbury Street, Room 300-C
Raleigh, NC 27603-5925

The Honorable David W. Hoyle
North Carolina Senate
300 N. Salisbury Street, Room 300-A
Raleigh, NC 27603-5925

Re: Advisory Opinion: Confidentiality of Retirement Benefit Information;
Session Law 2007-508

Dear Senator Rand and Senator Hoyle:

I am responding to your request to Attorney General Roy Cooper for our opinion as to the proper interpretation of certain provisions of Session Law 2007-508 (Senate Bill 1546). Specifically, you have asked whether statutory amendments enacted by the General Assembly in this legislation made information concerning retirement benefits a part of the confidential information in a state employee's personnel file and not subject to public inspection or examination.

Senate Bill 1546, entitled "An Act to Clarify the Public's Access to Public Employee Personnel Records and to Make Changes to the Law Pertaining to Confidentiality of Competitive Health Care Information," was ratified by the General Assembly on August 2, 2007, signed by the Governor on August 30, 2007, and subsequently codified as Session Law 2007-508. In general, the legislation amended various statutes governing the personnel records of public employees by extending the information required to be open for public inspection to the terms of employment contracts and instead by expanding the definition of public salary information to include benefits, incentives, bonuses, deferred compensation and all other forms of compensation. Statutes applying to employees of local boards of education, community colleges, mental health authorities, public health authorities, counties, cities, water and sewer authorities and the State were amended in

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this manner by virtually identical language. Section 5.5 and Section 8.5 also amended certain provisions of Chapter 131E to make public additional information concerning the compensation packages of public hospital employees while maintaining the confidentiality of competitive health care information.

The question you pose is raised by the amendments in Section 4 of the legislation, which amend NCGS §126-23. This statute requires each department, agency, institution, commission and bureau of the State to maintain a public record of each of its employees which makes available for inspection certain specified employment-related information. Prior to the enactment of Session Law 2007-508 "current salary" was one category of information available to the public. Section 4 amended this term by adding: "For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other terms of compensation paid by the employing entity." Based upon the plain language of this amendment, information showing benefits paid to an employee by the employing entity is now a part of the record required to be maintained for public inspection.

The concerns which have generated your question, however, involve the interpretation of the phrase "paid by the employing entity." It has been noted that retirement benefits are paid by the Teachers' and State Employees' Retirement System of North Carolina rather than by any individual "employing entity." NCGS §135-2 states: "A Retirement System is hereby established and placed under the management of the Board of Trustees for the purpose of providing retirement allowances and other benefits under provisions of this Chapter for teachers and state employees of the State of North Carolina." Members of the Retirement System who retire must apply to the Board of Trustees to receive a retirement benefit. NCGS §135-5(a)(1). It is therefore accurate to conclude that retirement benefits are paid by a state entity other than the "employing entity" of most state employees. A literal application of this premise requires a conclusion that the General Assembly did not intend for information concerning retirement benefits to be available for public inspection. This interpretation finds a measure of support in Section 4.5 of the legislation which amended NCGS §136-22 to add employment-related information gathered by the Retirement Systems Division of the Department of the State Treasurer to the definition of "personnel file" information which is not subject to public inspection.

A literal interpretation of the amendment, however, also requires a conclusion that only the Department of State Treasurer is required to maintain a record of the retirement benefits of its own employees, since these benefits are in fact paid by the "employing entity." To accept this analysis, of course, requires some basis upon which to conclude that the General Assembly intended for the retirement benefit information of all public employees to be confidential, except that of employees of the State Treasurer.

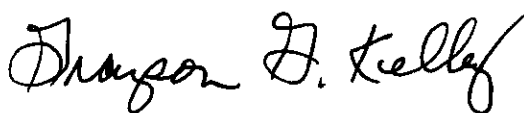
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We cannot conclude that the General Assembly intended such a result. The cardinal principle of statutory construction is to discern the intent of the legislature. State v. Jones, 359 N.C. 832, 616 S.E. 2d 496 (2005). Furthermore, where a literal interpretation of the language of a statute will lead to absurd results, or contravene the manifest purpose of the legislation, as otherwise expressed, the reason and purpose of the law shall control and the strict letter thereof shall be disregarded. Frye Regional Medical Center, Inc. v. Hunt, 350 N.C. 39, 510 S.E. 2d 159 (1999). In construing statutes, courts normally adopt an interpretation which avoids absurd or bizarre consequences, the presumption being that the legislature acted in accordance with reason and common sense and did not intend unfounded results. State ex rel. Commissioner of Insurance v. North Carolina Automobile Rate Administrative Office, 294 N.C. 60, 241 S.E. 2d 324 (1978).

A careful review of the amendments contained in Session Law 2007-508 reflects new language added to nine separate statutes which expands the employee-related information available for public inspection. Most notably, the definition of "salary" is amended in each statute by clarifying that public salary information is not restricted to pay, but also includes benefits and all other forms of compensation. Read within this context, it is clear that the primary intent of the legislature in enacting these amendments was to make available for public inspection complete information as to the compensation of public employees. An interpretation of the amended definition of "salary" in a manner which makes public all information regarding compensation and benefits - except benefits paid by the Retirement System - contravenes this intent. When the absurd consequence that a literal interpretation places on employees of the Treasurer's Office is added to the analysis, it is clear that the General Assembly could not have intended such a result.

It is therefore our opinion that the General Assembly, in enacting Session Law 2007-508, did not intend to exclude retirement benefit information from the records required to be maintained for public inspection by each department, agency, institution, commission and bureau of the State in accordance with NCGS §126-23. Such information, upon request, should be made available for inspection and copying.

Very truly yours,



Grayson G. Kelley
Chief Deputy Attorney General

GGK/ml