THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

December 12, 1955

Honorable Gordon H. Lloyd
Executive Secretary
Employees Retirement System of Texas
Austin, Texas

Letter Opinion No. MS-249

Re: Eligibility requirements of the Judicial Retirement Act.

Dear Mr. Lloyd:

Your request for an opinion concerns the status of a District Judge in the Judicial Retirement System established by Article 6228b, Vernon's Civil Statutes, under the following facts. The judge was removed from the office of District Judge for official misconduct, but subsequently he was again elected to the office of District Judge and is now serving in that capacity. He has not withdrawn the contributions which he had made to the System before his removal, and contributions have been deducted from his salary for services rendered since his re-election.

You have asked the following questions:

1. Is the judge eligible to participate in and receive benefits under the Judicial Retirement System?

2. If the above question is answered affirmatively, is he entitled to credit for service prior to the date that he was removed from office; or does his service which may be counted toward retirement begin with the date he took office after his subsequent re-election?

3. In the event that service prior to the date of his removal from office cannot be allowed to be participating service under the Judicial Retirement Act, can the money contributed by him to that date be refunded and returned to him?

4. In the event he is permanently ineligible to participate in the Judicial Retirement System and receive benefits therefrom because of his removal, should all monies contributed be refunded and returned to him, and no further contributions for Judicial Retirement purposes be accepted from him?

Section 6 of Article 6228b provides:

" . . . Any Judge who is removed from office by impeachment, or is otherwise removed for official misconduct, shall be ineligible to draw retirement pay under the provisions of this Act."

It is our opinion that this provision was not enacted in contemplation of a period of service subsequent to removal. The reason for making a judge ineligible for retirement benefits on the basis of service rendered prior to removal is apparent, but the reason is inapplicable to service thereafter rendered. The intent of the provision evidently was to void, for retirement purposes, service rendered prior to removal and not to make the individual ineligible for retirement benefits based on service subsequent to his removal. At the time the Judicial Retirement Act was passed there had never been an instance in the history of this State where a judge had been re-elected after having been removed from office, and the likelihood of such an occurrence was so remote that it could not reasonably have been within the contemplation of the Legislature.

A literal construction of the language used in a statute should be rejected if such a construction would lead to a result not contemplated or intended by the Legislature. "It is undoubtedly the duty of the court to ascertain the meaning of the legislature from the words used in the statute, and the subject-matter to which it relates, and to restrain its operation within narrower limits than its words import, if the court are satisfied that the literal meaning of its language would extend to cases which the legislature never designed to embrace in it." McKee v. United States, 164 U.S. 287, 293 (1896). "When the words used, followed literally, lead to an absurd consequence or to a construction clearly not contemplated, this constitutes a sufficient reason to depart from the language used for the purpose of ascertaining the intent." Scott v. Freeport Motor Casualty Co., 379 Ill. 155, 39 N.E.2d 999, 1002 (1942). In re Hibernia Bank & Trust Co., 185 La. 448, 169 So. 464 (1936); Inhabitants of Town of

Ashland v. Wright, 139 Me. 283, 29 A.2d 747 (1943); Board of County Road Commissioners v. Lingeman, 293 Mich. 229, 291 N.W. 879 (1940); 82 C.J.S., Statutes, Sec. 326, p. 632, note 59.

The courts of this State many times have announced the principle that the intendment of the Legislature controls over the literal meaning of the language used and that the letter of the statute will not be followed where to do so would violate the purpose of the act and lead to a conclusion contrary to its intent. Russell v. Farquhar, 55 Tex. 355 (1881); Board of Insurance Commissioners v. Sproles Motor Freight Lines, 94 S.W.2d 769 (Tex.Civ.App. 1936, error ref.); Houchins v. Plainos, 130 Tex. 413, 110 S.W.2d 549 (1937); State v. Dyer, 145 Tex. 586, 200 S.W.2d 813 (1947).

Applying these principles, we answer your first and second questions as follows: The judge is eligible to participate in and receive benefits under the Judicial Retirement System for the service performed after his re-election, but service performed prior to the date he was removed cannot be counted toward retirement. Deduction of contributions from his salary for the service rendered after his re-election was proper.

Your third question concerns the refund of contributions which were deducted from the judge's salary prior to his removal. Section 6 of Article 6228b provides in part:

> "Should any Judge of any Court of this State die, resign or cease to be a Judge of a Court of this State, except in the event of his appointment or election to a Court of higher rank, prior to the time he shall have been retired as provided under the provisions of this Act, the amount of his accumulated contributions shall be paid to his beneficiary nominated by written designation duly filed with the Chief Justice of the Supreme Court, or to him, as the case may be. Provided, however, that if he later becomes a Judge of a Court of this State he must pay back to the State the amount of the contributions which he had heretofore received before being entitled to retirement pay under the provisions of this Act. . . ."

Under the first sentence of this section, the judge was entitled to a return of his contributions theretofore made when by removal he "ceased to be a Judge of a Court of this State." For the reasons stated in answering your first two

questions, it is our opinion that the second sentence of this section does not require a repayment to the State of the refunded contributions for service which cannot be counted toward retirement. Since, as held in Attorney General's Opinion S-120 (1954), there is no limitation on the time within which a refund must be applied for, and since the judge would not be required to repay these contributions if he had withdrawn them before his re-entry into service, the contributions made before his removal may be refunded to him.

APPROVED:

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Yours very truly,

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By Mary K. Wall
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