COUNTY ADVISORY BULLETIN
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PUBLIC NOTICE REQUIRED PRIOR TO PRIMARY ELECTION FOR ELECTED OFFICIALS WHO RETIRE & RETURN TO SAME POSITION

Effective Date: September 26, 2003.

Ohio Revised Code Sections Affected: 145.38 (amended).

Background

A provision was included in the state biennial budget bill for SFY 2004 & 2005 (House Bill 95) by its Conference Committee that requires elected officials who are members of the Ohio Public Employees Retirement System (OPERS) to notify in writing the board of elections 90 days prior to the “primary” election of their intent to retire from their current elected position, draw a pension, and return to that “same” position through re-election or appointment.

Prior law required written notice 90 days before the “general” election. HB 95 simply moved the written notice earlier.

This provision also was included in House Bill 176, sponsored by Representative Jim Hoops. Representative Lynn Olman introduced a different approach to this matter; his House Bill 63 would have “prohibited” elected officials from retiring from their current elected position and returning to that same position while being able to concurrently receive a retirement allowance. Both bills were under consideration by the Ohio House’s Banking, Pensions & Securities Committee during the time when HB 176 was amended into the state budget bill (HB 95).

In general, if an elected official does not comply with the notice provision and proceeds to retire and return to their current position, they would be subject to a retirement allowance penalty. The penalty is forfeiture of the pension portion of the retirement allowance and suspension of the annuity portion. The penalty continues until the reemployment is terminated. The annuity portion accumulates to the member's credit to be paid in a single payment after the reemployment ends. The retirement allowance resumes on the first day of the first month after re-employment ends. (ORC 145.38 ©)

Provision

Again, HB 95 changed the deadline for an elected official to give notice to the board of elections of their intention to retire, draw a pension, and return to work during their term in office or subsequent term. ORC Section 145.38 requires an elected official give written notice at least 90 days prior to the primary election instead of 90 days prior to the general election as was previously required.

Following is additional information from the OPERS web site that explains elected official coverage in these circumstances:

> **Elected Officials**
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> If you are retired from OPERS and return to OPERS-covered employment as an elected official, you are treated as a re-employed retiree. If you are retired from another Ohio state retirement system and become a OPERS member as an elected official you are also treated as a re-employed retiree. However, if you are covered for non-elected official service, and you are also an elected official contributing to Social Security for your elected position, your elected service has no effect on your OPERS retirement, and you are not a OPERS re-employed retiree for subsequent elected service.
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> There is a limitation for an elected official who retires from OPERS during a term of office and who is elected or appointed to the same office during the remainder of the term or the next consecutive term. For these elected officials, the retirement allowance is suspended, which results in a portion of the allowance being forfeited and a portion suspended for the term(s) unless the elected official:
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> - retired more than 90 days before the election;
> - files a written notice of intent to retire with the county board of elections at least 90 days before the primary election; or,
> - is appointed to the same position and notifies in writing the appointing authority that they are retired or intend to retire before the end of the term.
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> The employer must provide the re-employed retiree's primary health care coverage if it is available to employees in comparable positions. The employer's health care coverage cannot be waived by the re-employed

retiree. Suspension or forfeiture of the retirement allowance interrupts the retiree's health care coverage.

Additional Information

For further information, please contact either OPERS Employer Call Center at 1-888-400-0965 or Cheryl Subler, CCAO Senior Policy Analyst, at csubler@ccao.org or at (614) 221-5627.