

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 79-318
	:	
of	:	<u>May 4, 1979</u>
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SUBJECT: RETIREMENT SYSTEM CONTRIBUTIONS—An individual who was a member of the Public Employees’ Retirement System on March 7, 1973, is not eligible for the discontinuance of his or her retirement contributions as a member of the San Mateo Retirement System irrespective of whether he or she has credit for 30 years’ service.

The Honorable Keith C. Sorenson, District Attorney, County of San Mateo, has requested an opinion on the following question:

Is an individual who was a member of the Public Employees’ Retirement System on March 7, 1973, the effective date of Government Code section 31625.2, and who became a member of the San Mateo County Retirement System after March 7, 1973, eligible for the discontinuance of his contributions to the San Mateo County Retirement System under Government Code section 31625.2 upon receiving credit for 30 years’ service?

CONCLUSION

An individual who was a member of the Public Employees’ Retirement System on March 7, 1973, the effective date of Government Code section 31625.2, is not eligible for

the discontinuance of his retirement contributions as a member of the San Mateo County Retirement System pursuant to Government Code section 31625.2 irrespective of whether he has credit for 30 years' service as determined pursuant to Government Code sections 31835 and 31836.1.

ANALYSIS

In effect, we are requested to consider certain facts and to render our opinion as to the applicability, based on those facts, of a cryptic provision of Government Code¹ section 31625.2, contained in the "County Employees Retirement Law of 1937," which reads as follows:

"Notwithstanding any other provisions of this chapter, contributions shall not be deducted from the salary of *any member* having credit for 30 years' service *providing such member was a member* on the effective date of this section and *remained in membership* continuously until credited with 30 years' service." (Emphasis added.)

This section was added in 1972. (Stats. 1972, ch. 1125.) At the same time, an amendment to sections 31676.1 and 31676.11 deleted the provisions reading "Contributions shall not be made by members having credit for 30 years of continuous service." (Stats. 1972, ch. 1125, § 2.) The same enactment also eliminated the limitation in sections 31676.1 and 31676.11 that the total retirement allowance shall not exceed 75 percent of the member's final compensation.

We are provided with the following facts. An individual, presently employed by the County of San Mateo, has been a member of San Mateo County's retirement system since February 19, 1978. The San Mateo County retirement system was established pursuant to the County Employees Retirement Law of 1937, as amended. (§ 31450 *et seq.*) Previously, he was a member of the County of Los Angeles' retirement system from August 1, 1950 to April 1, 1956. Subsequently, he became an employee of the County of Santa Clara from April of 1956 until February of 1978, during which time he was a member of the Public Employees' Retirement System (hereinafter PERS).

The effective date of section 31625.2, *supra*, was March 7, 1973. (Stats. 1972, ch. 1125.) Thus, on the effective date of section 31625.2 the affected employee was an employee of Santa Clara County and he was a member of PERS. PERS is not a retirement system established pursuant to the County Employees Retirement Law of 1937. (See § 20000 *et seq.*; cf. § 31450 *et seq.*)

¹ All unidentified section references are to the Government Code.

The affected employee is stated to have the requisite 30 years' of service required by section 31625.2, *supra*. (See §§ 31835, 31836.1.) Thus, the issue is whether the employee meets the statutory requirement that he must have been a "member" on the effective date of section 31625.2, e.g., on March 7, 1973. Does membership in PERS on March 7, 1973, qualify an employee of the retirement system of San Mateo County, otherwise deemed to be eligible, to cease making retirement contributions as provided by section 31625.2, *supra*?

As we shall explain more fully, the language used by the Legislature in the applicable statutes distinguishes between "membership" and "service." Section 31625.2, *supra*, contains two conditions precedent to eligibility to cease making retirement contributions: "membership" and "service." Individuals must first satisfy the requisite membership requirement before they are entitled to have their prior service considered in determining their eligibility to cease making retirement contributions pursuant to section 31625.2.

The relevant sections of the Government Code are those contained within the County Employees Retirement Law of 1937, as thereafter amended (hereinafter referred to as the 1937 Retirement Act). (§ 31450 *et seq.*) Prior to 1973, section 31676.1 provided in relevant part that a member of a county retirement system under the County Employees Retirement Law of 1937, (such county having a population in excess of 295,000 as of 1953) was entitled: (1) to receive a maximum total retirement allowance not to exceed 75 percent of that member's "final compensation" and (2) to cease making "contributions" to his retirement system once he has "credit for 30 years of continuous service." (See prior § 31676.1; Stats. 1961, ch. 84, § 33; Stats. 1961, ch. 389, § 1.)

In 1972 the Legislature amended section 31676.1 so as: (1) to entitle such a member to receive an increase in the maximum total retirement allowance equal to, but not to exceed, the member's final compensation and (2) to eliminate the existing right of a member to cease making contributions once he or she has credit for 30 years of continuous service. (See Stats. 1972, ch. 1125, § 2.)

As part of the same enactment, the Legislature enacted a new section, section 31625.2, *supra*, the import of which is at issue here, redefining who may cease making retirement contributions. First, it is apparent that the Legislature intended to eliminate, to some degree, the preexisting statutory right to cease making contributions to one's retirement system in exchange for an increase in the maximum total retirement allowance from 75 percent of final compensation to an amount potentially equal to the member's final compensation.

If we examine the classes of individuals affected by the 1972 changes in the 1937 Retirement Act, viewed at the time of the legislative changes in 1972, we can isolate at least four separate classes: first, prospective new members, i.e., those individuals who will become members after March 7, 1973; secondly, existing members as of March 7, 1973, who claimed no prior membership in any other retirement system; thirdly, existing members as of March 7, 1973, who claimed prior membership in another retirement system, and fourthly, individuals who subsequent to March 7, 1973, become members of a 1937 Act retirement system and who claim prior membership in one or more other 1937 Retirement Act systems and/or PERS.

Section 31625.2 clearly provides language appropriate to the first two classes. Section 31625.2 does not clearly provide for the third class. This lacuna was remedied in 1975 by the enactment of section 31836.1, which reads as follows:

“‘Service’ for the purpose of qualifying members for the discontinuance of contributions pursuant to 31625.2 shall also include service as an employee of the state, a contracting agency under the Public Employees’ Retirement System, of another county having a retirement system established under this chapter, or of any other public agency if the compensation for such service constitutes compensation earnable by a member under Section 31835.” (Stats. 1975, ch. 935.)

Thus, section 31836.1 clearly allows members, otherwise eligible, to tack prior periods of service in order to determine their eligibility for discontinuance of contributions. Thus, the third described class is now provided for by section 31836.1.

The individual previously described falls within the fourth described class. The 1937 Retirement Act contains several provisions that are intended by the Legislature “to encourage career public service by granting reciprocal retirement benefits to members who are entitled to retirement benefits from two or more retirement systems established under this chapter or from a retirement system established under this chapter and the Public Employees’ Retirement System. . . .” (§ 31830; see *Kobelin v. San Diego* (1970) 8 Cal. App. 3d 1057.) These “reciprocal benefit” provisions are contained within article 15 of chapter 3, part 3, division 4 of the Government Code. Section 31836.1, *supra*, which defines the types of service that may be considered in determining who may discontinue making contributions to their retirement system, is part of article 15, relating to reciprocal benefits. Section 31625.2, *supra*, imposing a condition of membership as of 1973, before one may discontinue making such contributions, is not part of article 15.

The class of “members” who would have been eligible to cease making retirement contributions under the predecessor statute would have been limited to those “members”

of a county retirement system “having credit for 30 years continuous service” within that system. (See former § 31676.1, *supra*.) The employee, previously described herein, would not qualify to cease making such contributions if former section 31676.1 were still the law. Section 31836.1, *supra*, removed an impediment as to the prior types of service that could be considered, but it does not purport to touch upon the requirement of membership. The phrase “any member” or the equivalent phrase “a member” appears innumerable times in the 1937 Retirement Act. (See, e.g., §§ 31458.2, 31462.1, 31620, 31621–31629, 31641.1–31641.9, 31653, 31670–31681.7.)

Section 31470 defines member as follows:

“Member means any person included its the membership of the retirement association pursuant to Article 4, and includes safety members as defined in Sections 31469.3, 31470.2. 31470.4 and 31470.6, or any person who has elected in writing to come within the provisions of Article 9.” (Emphasis added; article 9, *supra*, relates to “deferred retirement,” which concept is not at issue here.)

Section 31203 provides that: “If a member of a county retirement system becomes a member of another county retirement system, his membership in the first system ceases.

Section 31470.7, for instance, provides that: “The election by a member to receive credit for employment in public service or in county service pursuant to section 31641.1 or 31641.5 does not make such person a member during any part of such public service or county service.”

In no instance does the word “member” appear in the 1937 Retirement Act in a context which would suggest that its use (without appropriate qualification) is intended to include membership in PERS. When relevant, the Legislature has distinguished between membership in a system based upon the 1937 Retirement Act and membership in PERS. (See, e.g., §§ 31830, 31831, 31831.1, 31833, 31834, 31835, 31835.1, 31837, 31839, 31840.1.)

Thus, one who becomes a “member” of a 1937 Retirement Act system after the effective date of section 31625.2 must continue to have “contributions” deducted from one’s salary until one retires, as a quid pro quo for the increased maximum total retirement allowance that is payable upon such retirement. Further, a certain class or classes of “members” would continue to have the right to cease having contributions deducted from their salary once credited with 30 years’ service.

It appears that the concept of membership in a retirement system as of the effective date of section 31625.2 refers to membership in a county retirement system that is established pursuant to the County Employees Retirement Law of 1937.² Under the facts presented to us, the affected employee, although he was a county employee in 1973, was a member of the Public Employees' Retirement System on March 7, 1973, which retirement system is not a retirement system established pursuant to the County Employees Retirement Law of 1937.² (See generally § 20000 *et seq.*) We find no language that would suggest a contrary conclusion. PERS and the 1937 Retirement Act systems are distinctly separate entities. The phrase "any member" appearing in section 31625.2 cannot be deemed, in our opinion, to refer to a member of PERS, a non-1937 Retirement Act system.

Accordingly, it is concluded that an individual who was a member of PERS on March 7, 1973, the effective date of section 31625.2, is not eligible for the discontinuance of his retirement contributions as a member of the San Mateo County Retirement System pursuant to section 31625.2, irrespective of whether he has credit for 30 years' service as determined pursuant to sections 31835 and 31836.1. He is a "new member" of the San Mateo County Retirement System who must continue to make the requisite retirement contributions until he retires as a quid pro quo for the right to obtain the increase in the maximum retirement allowance authorized by section 31676.1.

² Under the facts presented in the opinion request, we do not reach the issue whether prior membership on March 7, 1973, in a different county retirement system organized pursuant to the 1937 Retirement Act constitutes the requisite membership pursuant to section 31625.2.