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State of California

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OPINION	:	No. 79-406
	:	
of	:	<u>May 4, 1979</u>
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SUBJECT: RETIREMENT BENEFITS—In computing retirement benefits under section 75033.5 of the Judges’ Retirement Law, a fraction of a year’s judicial service is not to be counted as a full year of service, but is to be counted only as the appropriate fraction thereof.

The Honorable Kenneth Cory, State Controller, has requested an opinion on the following question:

In computing retirement benefits under section 75033.5 of the Judges’ Retirement Law, is a fraction of a year’s judicial service to be counted as a full year or only as the appropriate fraction thereof?

CONCLUSION

In computing retirement benefits under section 75033.5 of the Judges’ Retirement Law, a fraction of a year’s judicial service is not to be counted as a full year of service, but is to be counted only as the appropriate fraction thereof.

ANALYSIS

A superior court judge contemplates retiring “early” as of January 1, 1980. On such date he will have 19 years and 3 months of credited judicial service. The question presented is whether, pursuant to section 75033.5 of the Judges’ Retirement Law (Gov. Code, § 75000 *et seq.*)¹) he is to be credited with 19.25 years of service, or 20 years of service in computing his retirement benefits.

Section 75033.5 provides in part with respect to such “early” retirement:

“Notwithstanding any other provision of this chapter, *any judge with at least five years of service, and prior to attaining age 70, may retire, and upon his application therefor to the State Controller after reaching the age which would have permitted him to retire for age and length of service under Section 75025 had he remained continuously in service as a judge up to such age, receive a retirement allowance based upon the judicial service as a judge of a court of record, with which he is credited, in the same manner as other judges, except as otherwise provided by this section the retirement allowance is an annual amount equal to 3.75 percent of the compensation payable, at the time payments of the allowance fall due, to the judge holding the office which the retired judge last held prior to his discontinuance of his service as judge, multiplied by the number of years and fractions of years of service with which the retired judge is entitled to be credited at the time of his retirement, not to exceed 20 years. . . .*” (Emphasis added.)

The legal issue is whether the phrase “multiplied by the number of years and fractions of years of service” results in a multiplier which includes a fraction of a year as a full year, or which merely includes the appropriate fraction thereof. We conclude that a fraction of a year is to be included only as such fraction.

“In engaging in statutory interpretation we are to accord words their usual, ordinary, and common sense meaning based on the language the Legislature used and the evident purpose for which the statute was adopted.” (*In re Rojas* (1979) 23 Cal. 3d 152, 155.) In our opinion the “usual, ordinary, and common sense meaning” of the words defining the multiplier for section 75033.5, that is, the words “the number of years and fractions of years” is that whole years and fractions of years are to be added. The word “and” essentially means “plus” in the statute.² Had the Legislature intended to include fractions of years as

¹ All section references are to the Government Code.

² See also Websters Third New International Dictionary, at page 80: “and . . . 1a: along with or together with . . . b: added to or linked to. . . .”

full years, the wording of the statute, in its simplest form, could or would have described the multiplier as “the number of years or fractions thereof.”

Additionally, it is to be noted that section 75091 of the Judges’ Retirement Law, which prescribes the manner in which a surviving spouse’s benefits are to be computed, specifically provides that “[f]or the purpose of this section any fraction of a year equals one year. This is strong evidence of legislative intent that a different result should obtain with respect to section 75033.5, *supra*, (Cf. *Safer v. Superior Court* (1975) 15 Cal. 3d 230, 237–238: “. . . the district attorney’s authority does not embrace the circumstances of this case in the Legislature’s clear demonstration *that it knows how to grant him such power when it wishes to do so.*” (Emphasis added.) See also § 9351, Legislators’ Retirement Law, providing that time is to be “computed in years and fractions thereof”; § 20862, Public Employees’ Retirement Law, “year of service” is equal to one year if 10 months or more; otherwise a fractional year of credit is given.)

Furthermore, we are advised that the administrative practice of the Controller has been not to consider fractions of years as full years in determining eligibility for retirement benefits under section 75025, or in computing retirement benefits under section 75033.5.³ This administrative construction is, of course, entitled to great weight and will normally be followed by the courts. (*Judson Steel Corp. v. Workers’ Comp. Appeals Bd.* (1978) 22 Cal. 3d 658, 668.)⁴ Also, sections 75025 and 75033.5, being in *pari materia* and interrelated provisions, should be similarly construed. (*People v. Corey* (1978) 21 Cal. 3d 738, 743; *People v. Comingore* (1977) 20 Cal. 3d 142, 147.)

Finally, “it must be presumed that the aforesaid (administrative) interpretation has come to the attention of the Legislature, and if it were contrary to the legislative intent that some corrective measure would have been adopted in the course of the many enactments on the subject in the meantime.” (*Meyer v. Board of Trustees* (1961) 195 Cal. App. 2d 420, 432; see also, e.g., *Wotton v. Bush* (1953) 41 Cal. 2d 460, 468–469.)

Accordingly, under the facts presented, the retiring judge under consideration herein will have 19.25 years of credited service, not 20 years of credited service, on

³ Section 73025 specifies the aggregate “years of service” a judge must have at particular ages to qualify for “normal” retirement. For example, a judge “[a]ge 66, with an aggregate of 18 years of service as a judge within the 22 years immediately preceding the effective date of retirement” may retire pursuant to section 75025. The Controller has required full years of service, not fractions thereof.

⁴ The Controller in no way has indicated that he believes this administrative practice to be erroneous. The instant request for our opinion was initiated at the suggestion of the judge who questions the Controller’s interpretation.

January 1, 1980 for purposes of computing his retirement benefits under section 75033.5.
