Utah State Retirement Board

Resolution 2012-02

Eligibility for Retirement –Elected Officials Not Eligible for Service Credit

Supersedes Resolution 2002-01
April 12, 2012

WHEREAS, pursuant to Utah Code Annotated §49-11-103, the Utah State Retirement Act "shall be liberally construed to provide maximum benefits and protections consistent with sound fiduciary and actuarial principles"; and

WHEREAS, pursuant to Utah Code Annotated § 49-11-203(k), the Board has the authority to "develop broad policy for the long-term operation of the various retirement systems, plans, and programs under broad discretion and power to perform the board's policymaking functions, including the specific authority to interpret and define any provision or term under this title when the board or office provides written documentation which demonstrates that the interpretation or definition promotes uniformity in the administration of the systems or maintains the actuarial soundness of the systems, plans, or programs "; and

WHEREAS, beginning in 2011 the Utah Code Annotated §§ 49-12-401, 49-13-401, 49-14-401, 49-15-401, 49-16-401, 49-17-401, 49-18-401, 49-22-304 and 49-23-303 require that a member "cease actual work for every participating employer" before becoming eligible to retire and receive an allowance under Title 49; and

WHEREAS, due to the requirement to terminate employment as set forth above Resolution 2002-01 is no longer consistent with law; and

WHEREAS, the term "cease actual work" is not defined by the Utah Code; and

WHEREAS, it has come to the attention of the Office that certain members serving as elected officials in local communities, such as part time mayors, part time school board members, part time special service district members etc., have been required to terminate that part time public service in order to retire from their regular profession; and

WHEREAS, such termination requirements have placed a burden on these members and may have the unintended consequence of making such public service less attractive to members of the Utah Retirement Systems; and

WHEREAS, permitting these public servants to remain in their position and not be required to terminate these positions before becoming eligible for retirement will not create adverse incentives for these members to retire earlier than they otherwise would have or attempt to artificially inflate their retirement benefit; and

WHEREAS, the Board desires to support civic involvement by members in a way that does not create an actuarially unsound employment practice.

NOW, THEREFORE, BE IT RESOLVED that a member serving as an elected official who is not a "regular full time employee" pursuant to U.C.A. §§49-12-102(4)(b)(iii) or 49-13-102(4)(b)(iii) and therefore not eligible for service credit Under Tier I will not be required to terminate the elected position.

THEREFORE BE IT FURTHER RESOLVED that elected officials who are eligible for service credit under Tier I are not covered by this resolution.

THEREFORE BE IT FURTHER RESOLVED that the public employer receiving the public service from the participant / retiree shall be responsible to provide required documentation to the Office to administer this resolution.

THEREFORE BE IT FURTHER RESOLVED that if the participant / retiree violates this resolution and the Office becomes aware of such violation, the retiree's allowance shall be forfeited during the period of violation and the retiree shall be required to repay to the Office the amount of the allowance paid.

THEREFORE BE IT FURTHER RESOLVED that, after the retirement of the member, as long as the employer certifies, pursuant to U.C.A. §49-11-505(1)(b), that the elected official is not full time, the elected official will not be subject to the post retirement restrictions of U.C.A. §49-11-505.

NOW THEREFORE BE IT FURTHER RESOLVED that this resolution does not apply to an elected official who is retiring from the elected position itself.

THEREFORE BE IT FURTHER RESOLVED that the end of an elected term will be considered a termination for purposes of retirement eligibility.

THEREFORE BE IT FURTHER RESOLVED that Resolution 2002-01 is superseded by this resolution and is no longer in effect.

THEREFORE BE IT FURTHER RESOLVED that due to the various fact patterns and issues concerning the timing of events that may arise and may be governed under this resolution the Executive Director shall have the discretion to apply this resolution to the individual circumstances presented.