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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable John E. Hixon Jr.
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Alabama Peace Officers' Annuity
& Benefit Fund
514 South McDonough Street
Montgomery, Alabama 36102-2186

Peace Officers' Annuity and Benefit Fund --
Payroll Deductions -- Political Activities --
Retirement Benefits -- Act No. 2010-761

The Alabama Peace Officers' Annuity and Benefit Fund ("Fund") is a state agency and is not a membership organization as that term is used in Act 2010-761. Thus, the Fund can continue to receive retirement contributions from members through automatic payroll deduction from payroll checks issued by the state, counties, cities, or other governmental agencies, without certifying to the appropriate governmental entity that none of the retirement contributions will be used for political activity.

Dear Mr. Hixon:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Can the Alabama Peace Officers' Annuity & Benefit Fund, which is not engaged in any activities listed in Act 2010-761, which amends section 17-17-5 of the Code of Alabama, continue to receive retirement contributions from members through automatic payroll deduction from payroll checks issued by the state, counties, cities, or other governmental agencies?

FACTS AND ANALYSIS

The Fund is an optional retirement plan established by the Legislature to provide retirement, disability, and death benefits to peace officers who choose to participate in the retirement plan. ALA. CODE §§ 36-21-66, 36-21-70, 36-21-71, & 36-21-72 (2001, Supp. 2010). Currently, the Fund has 2624 members that actively contribute to the Fund. Of those members, 806 have their contributions deducted from the state payroll, and 1575 have their contributions deducted from city, county, and other agency payrolls. Collectively, 90.7 percent of all members' contributions come from payroll deductions.

Members of the Fund include full-time peace officers that have the power of arrest. ALA. CODE § 36-21-60(11) (2001). Peace officers include officers, deputies, investigators, game wardens, marine police, and wildlife biologists. Peace officers are employed by the Alabama Department of Corrections, the Department of Public Safety, the Board of Pardons and Paroles, the Department of Conservation and Natural Resources, the Alcoholic Beverage Control Board, the Department of Industrial Relations, the Ethics Commission, the Attorney General's Office, county sheriff's departments, municipal police departments, and other agencies. The Supreme Court of Alabama has recognized the Fund as a state agency. *See Holland v. Bryant*, 402 So. 2d 892, 898 (1981).

Act 2010-761 states, in pertinent part, as follows:

(b) No person in the employment of the State of Alabama, a county, a city, a local school board, or any other governmental agency may arrange by salary deduction or otherwise for any payments to a political action committee or arrange by salary deduction or otherwise for any *payments for the dues* of any person so employed *to a membership organization which uses any portion of the dues for political activity*. For purposes of this subsection (b) only, political activity shall be limited to all of the following:

- (1) Making contributions to or contracting with any entity which engages in any form of political communication, including communications which mention the name of a political candidate.
- (2) Engaging in or paying for public opinion polling.

(3) Engaging in or paying for any form of political communication, including communications which mention the name of a political candidate.

(4) Engaging in or paying for any type of political advertising in any medium.

(5) Phone calling for any political purpose.

(6) Distributing political literature of any type.

(7) Providing any type of in-kind help or support to or for a political candidate.

2010 Ala. Acts No. 2010-761 (emphasis added).

To answer your question, we must determine whether the Fund is a membership organization governed by Act 2010-761. The statute does not define "membership organization." The meaning of words in a statute is to be construed within the context of the statute. *See Brock v. City of Anniston*, 14 So. 2d 519, 523 (Ala. 1943).

The Fund, as set forth above, is an agency of the State of Alabama. The contributions paid to the Fund by payroll deduction are not "dues" for "membership," but rather are contributions made by peace officers for purposes of participating in an optional retirement plan. The Fund is also prohibited by statute from using membership contributions for any purpose other than that specified in section 36-21-66. There is no provision in the statutes creating the Fund that allows the Fund to expend funds for any of the political purposes listed in Act 2010-761. *See* ALA. CODE §§ 36-21-60 to 36-21-78 (2001, Supp. 2010). Furthermore, persons employed by state agencies are prohibited from using state funds, property, or time for any political activities. ALA. CODE § 17-17-5 (2006). Based upon these factors, it is the opinion of this Office that the Fund is not a membership organization as that term is used in Act 2010-761.

CONCLUSION

The Fund is a state agency that does not receive membership dues and, thus, it is not a membership organization as that term is used in Act 2010-761. Therefore, the Fund can continue to receive retirement contributions from members through automatic payroll deduction from payroll checks issued by the state, counties, cities, or other governmental agencies.

QUESTION 2

If the Fund continues to receive retirement contributions from members through automatic payroll deduction from payroll checks issued by the state, counties, cities, or other government agencies, is the Fund required to certify to the appropriate governmental entity that none of the retirement contributions will be used for political activity?

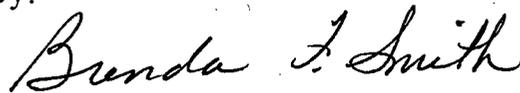
FACTS, ANALYSIS, AND CONCLUSION

For reasons stated above, Act 2010-761 does not apply to the Fund. Thus, the Fund can continue to receive retirement contributions from members through automatic payroll deduction from payroll checks issued by the state, counties, cities, or other governmental agencies, without certifying to the appropriate governmental entity that none of the retirement contributions will be used for political activity.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Matt Bledsoe of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division